

## Convergences – 2008-2012

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### Contents

Explanatory note .....	4
GOVERNANCE AND POWER-SHARING .....	5
SECTION 1: CONVERGENCES .....	5
The Federal Executive .....	5
The Federal Legislature .....	6
Federal Judiciary.....	8
Federal Public Service.....	9
Federal Public Services Commission .....	9
The Federal Auditor-General.....	9
Federal Offences .....	10
The Federal Division of Competences.....	10
External Relations.....	14
Hierarchy of Norms .....	18
Cooperation and coordination .....	19
Relationship between the Federal Government and the Constituent States.....	19
Past Acts and Treaties .....	20
SECTION 2: QUALIFIED OR CONDITIONAL CONVERGENCES (OR MATTERS ON WHICH THERE APPEARS TO BE A BRIDGABLE GAP).....	23
PROPERTY.....	25
SECTION 1: CONVERGENCES .....	26
SECTION 2: QUALIFIED CONVERGENCES AND CONVERGENCES IN PRINCIPLE/MEETING OF THE MINDS .....	29
Principles, categories and definitions .....	29
Time period for definition of “affected property” .....	29
Remedies .....	29
Criteria .....	30
Reinstatement.....	31
Exchange - How to allocate the remedy, value “adversely affected property” that will be exchanged, what mechanism/process is used .....	32
Development/property development corporation/land consolidation authority.....	33
Bizonality and property ownership .....	33

Ceilings/reinstatement entitlements .....	34
Compensation - How to allocate the remedy; how to raise funds for compensation; loss of use .....	34
Valuation of property .....	35
Claims intake, decision-making and allocation of remedies .....	35
Property Commission(s) .....	35
Property Court/Appeals Process .....	35
The question of restrictions on property purchases and sales post-settlement .....	36
Resettlement – alternative accommodation .....	36
Food for Thought.....	37
EUROPEAN UNION MATTERS.....	38
SECTION I: CONVERGENCES.....	38
The Ministry of EU Affairs .....	38
The Permanent Representation of United Cyprus to the EU .....	39
Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Federal government) .....	41
Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Constituent States/Federated Units).....	43
Implementation of the Acquis.....	45
Derogations/Transitional Arrangements.....	47
Financial Support for the Unification .....	47
Infringements .....	47
Participation/Representation of United Cyprus at EU Institutions.....	49
SECTION 2: POSITIONS OF THE SIDES, AS REFLECTED IN MOST RECENT JOINT PAPERS, WHERE THERE APPEARS TO BE A BRIDGABLE GAP.....	49
Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Federal Government) .....	49
Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Constituent States/Federated Units).....	50
Derogations/Transitional Arrangements.....	51
Participation/Representation of United Cyprus at EU Institutions.....	52
ECONOMY.....	53
SECTION 1: CONVERGENCES .....	53
Competences and Representation in Economy-Related Institutions .....	53
Central Bank, Currency and Financial Supervision.....	54

Macroeconomic Management .....	56
Budget, Debt Management and Taxation .....	59
Revenue Allocation and EU Funds.....	62
Internal Market and EU Harmonisation .....	63
Movement of goods, services and capital.....	64
Company Law .....	65
State Aid .....	65
Labour, Social Security, Pensions and Healthcare.....	65
Mutual Recognition and Enforcement of Standards.....	67
ALIENS, IMMIGRATION, ASYLUM AND CITIZENSHIP .....	68
SECTION 1: CONVERGENCES .....	68
Four Freedoms .....	68
Citizenship .....	69
Permanent Residency.....	69
Internal citizenship .....	69
SECURITY AND GUARANTEES .....	70
SECTION 1: CONVERGENCES .....	70
External security (Security and Guarantees).....	70
Internal security .....	71
TERRITORY .....	75
SECTION 1: CONVERGENCES .....	75
SECTION 2: QUALIFIED CONVERGENCES AND CONVERGENCES IN PRINCIPLE/MEETING OF THE MINDS .....	75
Setting the future boundary between the GkCyp and TkCyp Constituent State/Federated Unit	75
Resettlement/Relocation .....	75
Funds for resettlement.....	76
Jurisdictional issues/legal status .....	76
Phasing of withdrawal; monitoring; security aspects .....	77



## **Explanatory note**

This document is divided by topic and covers the period 2008-2012. Under each topic, Section 1 covers convergences, including from joint convergence papers. Divergent positions are reflected in blue for Greek Cypriot and red for Turkish Cypriot, as was used during the period of negotiation. Section 2 covers positions contained in the separate position papers that demonstrated agreement in principle (a meeting of the minds), certain understandings confirmed during meetings, qualified or conditional convergences or matters on which there appears to be a bridgeable gap.

The document is based on the sides' work product with references omitted. The topics are in all capital black letters, Sections 1 and 2 are noted in light blue and each topic is in green.

Where there are differences over definitions, these have been noted by either italics or by listing of the divergences. Issues on which there is no convergence at all are not included in this document.

## GOVERNANCE AND POWER-SHARING

### SECTION 1: CONVERGENCES

#### The Federal Executive

**Executive Structure:** The president and vice-president will come from different constituent states/federated units (CS/FUs).

**Executive Election:** Direct Election of the Presidency.<sup>1</sup>

**Executive Term:** The presidency shall not be voted out of office by a motion of no confidence.

A six year term.

**Council of Ministers:** There will be a Council of Ministers/Executive Council with an agreed number/ratio of Greek Cypriots and Turkish Cypriots.

**Council of Ministers appointment:** The Presidency shall appoint conjointly the members of the Council of Ministers. If they fail to do so, but a number of Ministers from either community can be agreed upon, these will be jointly appointed. The remaining Greek Cypriot Ministers will be appointed by the Greek Cypriot member of the presidency and the remaining Turkish Cypriot ministers by the Turkish Cypriot member of the presidency.

#### Council of Ministers decision-making

The Council of Ministers shall strive to reach all decisions by consensus. If this is not possible, decisions shall be taken by a simple majority of members present and voting, [comprising at least one vote from each community / provided this comprises at least two members from each community]. *At least two votes from each side will be required for decision-making in the Council of Ministers*<sup>2</sup>

<sup>1</sup> Convergence on the direct election of the presidency does not necessarily mean that direct elections, or a presidential executive, are the only options the two sides might converge on.

<sup>2</sup> This convergence was conditional to agreement on external relations; a 6 year term (4:2 GC-TC); and the stipulation that while neither President nor Vice-President would vote in the Council of Ministers, that if the President and Vice-president jointly disagree with a decision of the Council of Ministers on external relations, defence or security then they may vote against it.

### The Federal Legislature

- The legislative organ on the federal level shall be bicameral (composed of two Chambers). These will be the Senate (Upper House) and the House of Representatives (Lower House).
- In the Senate there will be equal representation. Election of Senators shall be conducted on communal basis.
- There shall be minimum representation of 1/4 for each Constituent State in the lower house. Representation on the basis of “internal citizenship” status.<sup>3</sup>
- Each Chamber will elect a President and two Vice Presidents, one from each Constituent State.
- The Presidents of the two chambers shall not come from the same Constituent State. At the same time, the Presidents of either chamber shall not come from the same Constituent State for two consecutive terms.
- The Vice President who does not come from the same Constituent State as the President of the relevant chamber shall be the First Vice President of that chamber.

### Decision making:

- Each chamber shall require a majority of the members in order to be able to take decisions (quorum).
- Decisions of the Parliament will require approval of both Chambers with simple majority, including at least 1/4 of Senators present and voting from each Constituent State.<sup>4</sup>
- There shall be a decision making at the lower house, **except for laws requiring special majority**, based on an alarm bell procedure as described below:<sup>5</sup>
  - (1) **With the exception of laws requiring special majority** following the introduction of the draft law and prior to the final-vote, a justified motion, signed by at least half of the members hailing from one of the Constituent States, can declare that the provisions of a draft law or of a motion are of a nature to gravely damage relations between the two Communities or that the proposal is harming the interests of a Constituent State or a Community.
  - (2) In this case, the parliamentary procedure is automatically suspended and the motion referred to the Supreme Court which, within thirty days, gives its reasoned binding opinion on the motion and decides whether it is justified or not.
  - (3) If the Supreme Court decides that the motion is justified then the relevant draft law shall be deleted (removed) from the agenda of the House of Representatives and same draft cannot be resubmitted to the House of Representatives.

<sup>3</sup> Subject to defining the parameters for obtaining internal citizenship.

<sup>4</sup> For the TkCyps this is conditional to agreement on their proposals for an Alarm Bell, which applies the Alarm Bell to all laws except ‘for laws requiring special majority’.

<sup>5</sup> The GkCyps accept the Alarm Bell procedure only if it applies also to laws requiring special majority.

(4) If the Supreme Court decides that the motion is not justified then the draft law shall be put back to the House of Representatives' agenda and the normal legislative procedure shall apply, where the House of Representatives will be able to take a decision by simple majority.

(5) This procedure can only be applied once with regard to the same bill or motion."

- A special majority of 2/5 of sitting Senators from each Constituent State, in addition to a simple majority of deputies present and voting shall be required for special laws and decisions listed in the constitution<sup>6</sup> / A special majority of 2/5 of sitting Senators from each Constituent State, in addition to a simple majority of Deputies present and voting including 1/4 of the representatives from each Constituent State shall be required for special laws and decisions listed in the constitution.

#### The definition of deadlock:

A deadlock arises when the upper house fails to adopt a bill which is passed by the lower house and

- (i) without which the federal government or its institutions could not properly function, or
- (ii) the absence of which would result in a substantial default on the international obligations of the federal government or the obligations of the federal government as a member of the European Union.

#### Deadlock resolving mechanism

If a deadlock arises, the President or the Vice-President of the federal government or the President or Vice-President (who comes from the other community) of the Senate shall have the right to refer the deadlock to the deadlock resolving mechanism.

- A deadlock resolving committee comprising equal number of Turkish Cypriot and Greek Cypriot Senators shall be formed as a deadlock resolving mechanism. This committee shall prepare and accept a proposal with majority and this proposal shall be sent to the Parliament.
- If the committee does not manage to prepare and accept a proposal with majority, then a Senator shall be added to the Committee from each **Constituent State/federated unit**, rotationally on a case by case basis. The committee with an additional member shall accept a proposal with majority and send it to the Parliament.
- If the deadlock on serious issues which are exhaustively specified in the federal Constitution persists for two consecutive years, the Parliament will be dissolved and elections will be proclaimed.

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<sup>6</sup> For the GkCyps acceptance of text in blue by the TkCyps is a condition for reaching convergence on the Legislature.

### **Federal Judiciary**

- The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution.
- The appointment of the judges shall be amongst lawyers of high professional and moral standards.
- The conditions of service of all federal judges shall be laid down in the instrument of appointment.
- There shall be a federal Supreme Court.
- The federal Supreme Court shall uphold the Constitution and ensure its full respect.
- The federal Supreme Court shall sit as the federal Higher Administrative Court, federal Court of Appeals and the federal Constitutional Court.
- The federal Supreme Court shall have exclusive jurisdiction to adjudicate finally on all matters as provided for in the constitution.
- There shall be an equal number of Turkish Cypriot and Greek Cypriot judges in the federal Supreme Court.
- Whether the court shall sit as the federal constitutional court or the federal appeals court, or any other federal court designated by the constitution, there should be an equal number of Turkish Cypriot and Greek Cypriot judges.
- The federal Supreme Court shall have, inter alia, the following functions which shall be provided for in the Constitution:
  - a) Jurisdiction to review federal administrative acts or decisions.
  - b) Jurisdiction to act as the federal electoral court.
  - c) Exclusive jurisdiction over disputes between the Constituent States, between one Constituent State or both Constituent States and the federal government and between organs of the federal government.
  - d) Exclusive jurisdiction to determine the validity of any federal or Constituent State law under the federal constitution.
  - e) Primary jurisdiction over violations of federal laws where provided for by federal legislation.
  - f) Jurisdiction to punish for contempt of Court.
- Federal courts of First Instance which will function as criminal and administrative courts may be established. Federal criminal courts shall only deal with federal offences. Federal administrative courts shall only deal with the acts and/or omissions of the federal public administration. These courts will be composed of an equal number of Turkish Cypriot and Greek Cypriot judges.

### Deadlock resolving mechanism

- In case of a split decision based on community, the Constitutional Court may, at its discretion, send the law back to the Parliament together with the comments of its members.



- If the deadlock persists, the Constitutional Court shall, on an ad-hoc basis, choose one out of three foreign judges designated by the federal executive, to ensure that it will thus be able to reach a final decision.
- In case of a split decision based on community, the Supreme Court may, at its discretion, send the administrative decision back to the administrative organ together with the comments of its members.
- If the deadlock persists, the administrative court shall, on an ad-hoc basis, choose one out of three foreign judges designated by the federal executive, to ensure that it will thus be able to reach a final decision.
- The aforementioned will apply in cases of split decisions based on community in all federal courts.

### **Federal Public Service**

There shall be a Federal Public Service (FPS). A federal law shall regulate all matters related with it.

A federal public servant may not simultaneously serve as a public servant of a **federated unit/Constituent State**. The case of secondment is an exception.

#### *Decision making procedures in the Federal Public Service*

The decision making procedures of all departments, institutions and any other administrative organs of the federal administration shall be based on the principle of political equality as defined by the UN Security Council which provides, inter alia, for effective participation of both communities in all organs and decisions of the federal government.

### **Federal Public Services Commission**

There shall be a Federal Public Service Commission.

It shall be the duty of the Commission to appoint, confirm, emplace on the permanent, establishment, promote, transfer, second, retire and exercise disciplinary control over, including dismissal or removal from office of public officers.

The members of the Commission shall be appointed for a period which is one year more than of the members of the executive. They shall be dismissed only for the same reasons and in the same manner as the Supreme Court judges.

### **The Federal Auditor-General**

The federal Auditor-General and federal Deputy Auditor-General shall be the Head and Deputy Head, respectively, of the Federal Audit Office. They shall be members of the federal public service and shall not be retired or removed from office except on like grounds and in like manner as judges of the Supreme Court.

The federal Auditor-General, assisted by the federal Deputy Auditor-General, shall on behalf of the federal government, control all disbursements and receipts and audit and inspect all accounts of moneys and other assets administered, and of liabilities incurred, by or under the

authority of the federal government and for this purpose, shall have the right of access to all books, records and returns relating to such accounts and to places where such assets are kept.

The federal Auditor-General, assisted by the federal Deputy Auditor-General, shall exercise all such other powers and shall perform all such other functions and duties as are conferred or imposed on him/her by law. The federal Auditor-General shall submit annually a report on the exercise of his functions and duties under the Constitution to the executive who shall cause it to be laid before the federal Parliament.

### **Federal Offences**

There shall be a federal law regarding federal criminal offences.

Federal offence means an offence against federal law. Therefore, where a federal law which is introduced and passed by the Federal Parliament contains penal provision, then, any person who contravenes these provisions commits an offence against federal law.

Federal Criminal Courts shall be established. Criminal courts shall comprise equal number of Turkish Cypriots and Greek Cypriots

Federal offence is an act, attempt or omission punishable by federal law. Federal offences may include crimes against federal property, federal public order, treason, offences against the Constitution, offences affecting relations with foreign states, tranquillity and the use of armed force against the federal government.

### **The Federal Division of Competences**

List of Competences to be vested in the Federal Government:

The federal government shall exercise the legislative and executive competences in the following matters:

1. EU relations and EU matters which are listed in the Constitution. These competences shall be exercised in accordance with the Cooperation Agreement and the federal laws on the conduct of EU matters.
2. External relations, including conclusion of international treaties (Footnote: **The Constituent States will have the right to conclude international agreements on matters within their competences.** Foreign Affairs are a federal competence and function. This competence must be exercised in such a manner that Cyprus can speak and act with one voice internationally. The constituent states shall cooperate with each other and the federal government and shall participate in the formulation and implementation of policy on Foreign Affairs on matters within their sphere of competence in accordance with the provisions of a Cooperation Agreement which will further provide for a consultation process of the federation with the constituent states on matters that fall within the competences of the federation.).
3. Defence policy (Constituent States shall not have defence policies)
4. Communications, including postal, electronic and telecommunications (Footnote: **Without prejudice to ownership).**



5. Meteorology
6. Cypriot citizenship (Footnote: Subject to discussions regarding civil and political rights), including issuance of passports and; immigration, including asylum, deportation and extradition of aliens
7. Combating terrorism, drug trafficking, money laundering and organized crime
8. Pardons and Amnesties for federal crimes
9. Appointment of federal officials, including diplomatic officers
10. Intellectual property
11. Weights and measures
12. Economic convergence<sup>7</sup>, labour rights and the following social issues
  - a) Protection of the family (particularly mothers and children)
  - b) Right to an adequate standard of living
  - c) The right to the enjoyment of the highest attainable standard of physical and mental health
13. Central Bank functions, **regulation and supervision of the banking sector and banking regulations** (Footnote: **For the regulation and supervision of the banking sector and banking regulations to be a function of the Central Bank, numerical equality in the Central Bank is required. Otherwise, an independent regulatory body with equal representation for the regulation and the supervision of the banking sector should be established.**)
14. **Regulation and supervision of the banking sector** (Footnote: **Subject to establishing an independent regulatory body with numerically equal representation.**)
15. Federal finances, including federal budget and all indirect taxation, including customs and excise, federal economic and trade policy
16. Regulation and supervision of financial sector (Footnote: **Subject to establishing an independent regulatory body with numerically equal representation**)
17. Incidental to the above competences, the government shall exercise legislative and executive competences over federal administration, including
  - public service and federal police;
  - its independent institutions and officers;
  - elections and referenda at the federal level;
  - offences against federal laws;
  - federal administration of justice;

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<sup>7</sup> The GkCyp side wanted to add "Development Policy specifying: Constituent States development policy should be consistent with the federal development policy." The TkCyps indicated they could consider including among the Federal Competences the "Development policies specifying: Federal government and constituent states shall both have their own covering respective competences".

- federal property, including public works for federal facilities and expropriation in consultation with the relevant Constituent State;
- like matters which are clearly incidental to the specific powers of the federal government.

#### 18. International navigation:

International navigation (Footnote: International navigation has the meaning ascribed to it by the 1982 UN Convention on the Law of the Sea. **This term does not include ownership of ports and, port services and facilities**), territorial waters, continental shelf, contiguous zone and exclusive economic zone (Footnote: These maritime areas have the meaning ascribed to them by the 1982 UN Convention on the Law of the Sea. The federal government has the power to exercise its listed competences within internal waters including determination of baselines in accordance with international law including 1982 UNCLOS. This is without prejudice to the power of the Constituent States to exercise their competences within the respective parts of maritime areas of the United Cyprus adjacent to their land territories). Delimitation and settlement of dispute issues regarding these maritime areas with neighboring states (Footnote: The 1982 UNCLOS shall be included in the List of International Treaties Binding on the united Cyprus).

A special majority in the legislature as provided for in the federal constitution shall be required for ratification of treaties and adoption of laws and decisions concerning territorial waters, continental shelf, contiguous zone and exclusive economic zone.

Decisions on delimitation and settlement of dispute issues regarding these maritime areas shall be taken by the federal executive.

#### 19. Aviation (covers all relevant matters including the airspace and the FIR)

Civil aviation shall be a federal competence: United Cyprus shall have one FIR within which provision of air traffic and navigation services shall be carried out by two Constituent States' Area Control Centers, namely Larnaca and Ercan ACCs, in their respective service areas. The service areas of each ACC shall be registered to the European Air Navigation Plan by the federal government in accordance with relevant ICAO rules and procedures.

Each Constituent State shall retain the ownership of the facilities and be responsible for the staffing, infrastructure and operation of their respective ACC. Revenues generated by services provided by both ACCs will be collected by the federal government through Eurocontrol Central Route Charging Office (CRCO) in line with current procedures and distributed accordingly between Constituent States based on the services provided.

Details of FIR issue shall be specified in the relevant federal law according to the above principles.<sup>8</sup>

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<sup>8</sup> The TkCyp proposals also include: "The following will be implemented by the Constituent States according to a federal law on the implementation of federal laws by Constituent States. i) Ownership, operation and certification of internationally designated airports of Constituent States, in accordance with relevant federal laws and regulations. ii) Establishing and operating "Control Zones-CTR" and "Terminal Control Areas-TMA" for the safety, regularity, efficiency and control of air traffic. iii) Establishing their own airline companies, as well

Civil Aviation shall be a federal competence All matters relating to Civil Aviation will be administered by the Federal Civil Aviation Authority (FCAA).<sup>9</sup> The FCAA ensures compliance with all relevant International and Federal Laws and Regulations.

United Cyprus will have a single Flight Information Region and two ACCs, one each in the area of each Federated Unit. The staff operating the ACCs will be Federal Employees and will hail predominantly from the Federated Unit in which the ACC is located.

Federal Law may entrust the implementation of the Federal competences to the Federated Units.

20. Natural resources, including water resources. Footnote: Without prejudice to ownership and operation of water facilities)
21. Competition (Footnote: Subject to establishing an independent regulatory body with numerically equal representation)
22. Antiquities<sup>10</sup>

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as cargo, ground handling and catering companies or outsourcing such services. iv) Granting permissions for landing on/take off from their respective airports. v) Collecting all revenues with regard to the services provided for the aircraft for their operations within their respective airports and ACC service areas, as well as for services such as ANS, CNS/ATM (Communications, Navigation and Surveillance Systems for Air Traffic Management) and ATC. vi) Coordinating, cooperating and concluding technical arrangements, between themselves and with the relevant authorities of third parties, regarding ATS (Air traffic Services) (in coordination with Federal Government). vii) Promulgation of NOTAMs within their respective ACC service areas.”

<sup>9</sup> The GkCyp proposals also include: “The Federal Civil Aviation Authority will, inter alia, undertake the: (a) Certification of internationally designated airports. (b) Establishing and operating “control zones – CTR” and “Terminal Control Area” TMA for the safety, regularity and control of Air Traffic. (c) Certification of Airlines. (d) Granting permission for landing/take off from all airports. (e) Route charges for the provision of air navigation services (ANS) to traffic using the Cyprus FIR as designated by ICAO, are collected by the Federal ANS Agency through EUROCONTROL. (f) Collection of all revenues with regard to the services provided by the ACC and such other services as ANS, CNS/ATM. (g) Communication, Navigation and Surveillance System for Air Traffic Management and Promulgation of NOTAM’s. Nothing in the above precludes the: 1) Ownership, operation such as provision of ground services, cargo services, luggage services, catering services and management of internationally designated airports by natural persons, legal persons or the Federated Units. 2) Registration of airlines. 3) Determination of landing fees for aircraft and passengers. 4) Collection of revenues for services provided by the airport operators.”

<sup>10</sup> Specifying that revenues should remain with the relevant Constituent States/Federated units.



## External Relations

- Without prejudice to the capacity of the Constituent States to conclude international treaties, External Relations falls within the competences of the Federal government. In accordance with the agreed principle of a single international legal personality of the united Cyprus, external relations, including the conclusion of international treaties, shall be the competence of the Federal Government.
- A Cooperation Agreement between the federal government and the federated units/Constituent States shall regulate the implementation of the provisions of the Constitution regarding external relations. A federal law shall regulate the matters connected with the external relations of Cyprus.
- Obligations of Cyprus under international agreements shall be implemented by federal government or federated unit/Constituent State authority which enjoys competence in the subject matter to which the agreement pertains.

### Ministry/Department of External Relations and the diplomatic service

- There shall be a Ministry/Department of External Relations comprising the diplomatic service and other officers serving in the Ministry/Department and overseas to administer the external relations of Cyprus. The organization, powers, duties and functions of the Ministry/Department shall be provided for in the federal law.
- The Diplomatic Service will be established as a separate branch of the federal public service. The composition of the Diplomatic Service shall be proportional to the population of the federated units/Constituent States, though up to 30%/at least 1/3 of the Diplomatic Officers and Diplomatic Staff must hail from each federated unit/Constituent State (Footnote: The Greek Cypriot side considers it useful to discuss representation ratios and all relevant matters as a package. This ratio shall also apply for appointments to overseas posts).
- The appointment and recall of Head of Mission from amongst persons serving in the diplomatic service to offices in foreign countries shall be made by the Council of Ministers/Presidential Council on proposal of the member of the Council responsible for external relations (Footnote: The federal law on the external relations shall prescribe cases where persons other than serving in the diplomatic service can be appointed as Head and Deputy Head of Mission in the same manner. There shall be other provisions on this matter for the transitional period as well. ). The Head of Mission and the Deputy Head of Mission shall not hail from the same federated unit/Constituent State.
- The Heads of Missions of Cyprus to the United Nations in New York, the United Nations in Geneva, the United Nations in Vienna, the Council of Europe in Strasbourg, Turkey, Greece, Germany and the Permanent Members of the UN Security Council shall hail in equal numbers from both federated units/Constituent States. The Greek Cypriot side considers it useful to discuss representation ratios and all relevant matters as a package. This requirement should be fully implemented to the extent possible not later than the end of the transitional period.
- The Constituent States may maintain diplomatic representatives who shall be placed on the diplomatic list of united Cyprus'.

- The recognition of states, the establishment and severance of diplomatic relations with foreign countries and the participation in intergovernmental and other international organizations, institutions and international initiatives (such as regional functional airspace blocks-FABs in the framework of Single European Sky) unless otherwise provided by the Comprehensive Settlement document or the federal Constitution, shall be decided by the Presidential Council.
- The assignment of duties in foreign countries, as special envoys, shall be made by the Presidential Council, upon a proposal by the member of the Presidential Council responsible for External Relations or for the EU Affairs.
- The Presidential Council shall suggest candidates or appoint members to international bodies. In so doing, the Presidential Council shall ensure that there is an equitable balance of nominees hailing from each Constituent State.

#### Special ties of friendship

- Cyprus should maintain special ties of friendship with Greece and Turkey and should accord them most-favoured nation treatment **in connection with all agreements whatever their nature to the extent that is compatible with its obligations as a member of the EU. This treatment shall be compatible with Cyprus' EU obligations.**
- Agreement in principle on the enjoyment of four freedoms by Turkish nationals.<sup>11</sup>

#### Federal decisions on external relations including international treaties<sup>12</sup>

- **The Federal Government can make treaties on all matters. The Federal Government will not use its treaty making power to usurp the competences of the federated units/constituent states. On matters falling within its competences, only the Federal government is entitled to conclude international treaties. Therefore Constituent States cannot conclude international treaties on matters falling into the competence of the Federal government. Constituent States shall conclude international treaties on all matters falling within their competences.**
- **A Joint Committee on External Relations (JCER) to assist in the determination of Cyprus' foreign policy shall be established. The Committee shall comprise members of the Presidential Council responsible for external relations and the EU and the relevant members of the Constituent State governments hailing in equal numbers from each constituent state. The powers and functions of the JCER will be expounded in the Cooperation Agreement. There shall be a JCER which shall be a consultative body for external relations matters relating to the competences of the federated units. The Committee shall comprise members of the Council of Ministers/Presidential Council responsible for external affairs and the EU and the relevant members of the federated unit/constituent state governments hailing in equal number from each federated unit.**

<sup>11</sup> This agreement indicates: This will be done in a way that the demographic ratio between the two communities is not altered; The above is subject to reaching agreement on the issue of Turkish nationals/settlers residing in the north before the solution.

<sup>12</sup> DC and MAT had reached a tacit understanding in January 2010 that if both the President and the Vice-President disagree with decision of Council of Ministers on issues of foreign policy, (defence and security,) they will have the right to decide otherwise.

- Determined efforts shall be made through the JCER for the resolution of any relevant differences. If consensus is not reached in the JCER, the Council of Ministers shall decide while in the Minister of Foreign Affairs shall consult, through the JCER with the federated units on the decisions relating to their competences, before taking a final decision. Constituent States shall be consulted on federal decisions on external relations that affect their competences. Federal decisions on external relations within the spheres of competence of the Constituent States shall be made in agreement with the Constituent States with the additional safeguard that determined efforts shall be made through the JCER for the resolution of any relevant differences. If it does not prove possible to do so, then the consent of the Constituent States will be required.
- Treaties on Cultural and Commercial matters: The federal government will be able to conclude treaties on these matters subject to the concurrent prior consent of both Constituent States.<sup>13</sup>
- Treaties on matters falling into the competences of the Constituent States (other than commercial and cultural matters): The federal government may also conclude international treaties in addition to Constituent States on these matters in consultation with the Constituent States. In such a case a treaty of this nature shall not be implemented within the territory of the Constituent State, the legislature of which has not ratified the said treaty.
- In concluding international treaties falling into the competences of the Constituent States the federal government shall inform and consult the Constituent States at every stage.
- In the case of multilateral treaties that include a federal clause, a federated unit may request the Federal executive that a treaty shall not apply to its territory if: the scope of the treaty falls within the competences of the federated units and the treaty is of a nature that would permit its application to only one of the federated units. If the Federal Executive decides positively, it shall inform the other High Contracting Parties accordingly.
- If both federated units object to the conclusion of a treaty, the Federal Government shall refrain from signing such a treaty. If both Constituent States object to the conclusion of a treaty on matters falling within their competences, then the Federal government shall not conclude such a treaty.
- In case any federated unit considers that a treaty infringes upon its competence, it may apply to the Supreme Court for interim measures which have suspensory effect on the conclusion of the treaty.
- Treaties shall be ratified by Parliament. All treaties concluded by the Federal government shall be ratified both by the Senate and the lower house.
- All treaties on matters falling within the competence of the federated units shall be ratified by special majority. International treaties concluded by the Federal government on matters falling into the competences of the Constituent States shall be ratified by a special majority in both the Senate and the lower house.
- Treaties concerning territorial waters, continental shelf, contiguous zone and exclusive economic zone shall be ratified by special majority.

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<sup>13</sup> For the TkCyps, this is conditional on the GkCyp side acceptance of the principle that “a treaty falling into the competences of the Constituent States concluded by the federal government shall not be implemented within the territory of a Constituent State the legislature of which has not ratified the said treaty.”



### Constituent states' rights to conclude international treaties

- The constituent states/federated units may conclude agreements on matters falling within their sphere of competence with States and International Organizations that have relations with united Cyprus<sup>14</sup>, with the prior consent of the Federal Government.
- Commercial matters (Footnote: Subject to finalization of agreement on federal competences/Commercial matters include economic investment and financial assistance) and cultural matters. Footnote: Cultural matters include *inter alia* language, religion, customs (including dress, cuisine), arts (including theatre, dance, music and literature), education (including matters of primary, secondary and tertiary education, vocational institutes, co-operation in research) and sports.):

No prior consent of the Federal Government will be required for agreements on commercial matters and cultural matters. The Constituent States shall have the right to conclude international treaties with other states, international organizations and sub-entities on these matters. However the Constituent States shall inform the federal government at every stage. The federal council of ministers shall be able to suspend the conclusion of such treaties if certain conditions are met (as described in the Turkish Cypriot proposal dated 12 January 2011).<sup>15</sup>

- On certain matters falling into the competences of the Constituent States (such as agriculture, fisheries and forestry) the Constituent States will have the right to conclude international treaties with other states and international organizations subject to prior consent of the federal government. Moreover Constituent States shall use the channel of federal ministry on external relations for contacts at a political level with foreign governments. However they may have direct contacts with Constituent States, sub-entities or subordinate authorities of other states in the conclusion of such treaties.
- On other matters falling into their competences, the Constituent States shall have the right to conclude treaties with other states and international organization by informing the federal ministry of external relations at every stage. However the federal council of ministers shall have the right to suspend the conclusion of these treaties (not subject to certain conditions – different from the model described above in the case of commercial and cultural matters.
- No prior consent of the Federal Government will be required for agreements with sub-entities or subordinate authorities of States.
- The agreements referred to above (in the three paragraphs above) can be concluded unless<sup>16</sup>:

that foreign state is not recognised by united Cyprus or the united Cyprus does not maintain diplomatic relations with that foreign state; or

such an agreement would impair the federal foreign policy or damage external relations of the united Cyprus and/or the interests of the other federal unit/constituent state.

<sup>14</sup> This is acceptable for the GkCyp side only if the “prior consent of the Federal Government” is accepted by the TkCyp side.

<sup>15</sup> This reads: “That foreign state is not recognized by Cyprus or Cyprus does not maintain diplomatic relations with that foreign state; Such an agreement would impair the federal foreign policy or damage external relations of Cyprus.”

<sup>16</sup> For the GkCyp side this is conditional to agreement in the rest of the paragraph GkCyp paper 27 June 2011).



- In the exercise of the powers described above, the following procedure shall apply:
  - a. The federated units shall act through the federal ministry of foreign affairs for contacts, at the political level, with foreign governments; and
  - b. The federated units may have direct contacts with constituent-or-sub-entities or subordinate authorities of other states. In this case, they shall inform the federal Ministry of Foreign Affairs upon commencement of negotiations on any agreement with such authorities and continue to advise on the progress and outcome of such negotiations.
- If either the President or the Vice President considers that the agreement in question constitutes a breach of the Constitution, they may decide separately to take the matter to the Constitutional Court before the conclusion of the agreement. Until the Court decides in an expedited process, conclusion of such an agreement is suspended.

### Hierarchy of Norms

Proposed amendments of the Constitution shall be submitted to referendum for approval by separate majority of the **citizens in / citizens of** each **federated unit/Constituent State** after adoption by both Chambers of the Federal Legislature.

The Constitutional Laws shall be approved by the federal Parliament and both **federated unit/Constituent State** Legislatures.

Cooperation Agreements shall be signed by the federal government and the **federated units/Constituent States** and these agreements shall be ratified by the legislative organs of the federal government and of the **federated units/Constituent States**.

No provision of the federal constitution and Constituent State constitutions a) shall invalidate laws, acts or measures enacted or taken by the Federal Government or the Constituent States required by the obligations of the EU membership, or b) prevent regulations, directives and other binding provisions or measures enacted by the EU from having legal force throughout Cyprus.

Hierarchy of norms will be as follows:

- Constitution
- Constitutional Laws, International Treaties<sup>17</sup>, Cooperation Agreements
- Federal Laws **and the Constituent State laws**<sup>18</sup>
- **Laws of the federated units**<sup>19</sup>

<sup>17</sup> The GkCyps have specified: "International Law shall prevail over federal and federated unit legislation."

<sup>18</sup> The TkCyps specified in January 2010 that: "Federal laws regarding the competences of the Federal Government shall prevail over Constituent State laws, while Constituent State laws regarding the competences of the Constituent States shall prevail over the federal laws."

<sup>19</sup> The GkCyps specified in January 2010 that: "Potential conflicts between federal and federated unit laws shall be resolved by the Supreme Court. In such cases, the Federal Government and/or each federated unit shall have the right to refer the matter to the Supreme Court both before and after a law is enacted by the Federal Parliament or the federated unit Parliaments. In both cases the Supreme Court shall decide within two months." The GkCyps specified at one point that the period should be shortened to one month.

### Cooperation and coordination

Cooperation and coordination will be achieved by Constitutional Laws and Cooperation Agreements. Matters subject to the Constitutional Laws will be provided for in the Constitution.

Any dispute arising from the interpretation or application of the Cooperation Agreements shall be decided by the Supreme Court.

The **federated units/Constituent States** shall strive to coordinate or harmonize their policy and legislation between them **and** with the federal government. This shall, subject to final agreement on competences, be done through agreements, common standards and consultations wherever appropriate, in particular, on the following matters:

- Tourism.
- Protection of the environment and use and conservation of energy.
- Fisheries and agriculture.
- Industry and commerce, including insurance and consumer protection.
- Zoning and planning, including for overland transport.
- Health, including regulation of tobacco, alcohol and drugs, and veterinary matters.
- Social security and labour.
- Acceptance of validity of documents.
- Education and sports.
- Protection of human rights in compliance with international law.

Either **federated unit/Constituent State** or any branch of the federal government may initiate the coordination and harmonization process. Agreements on such coordination or harmonization shall be approved by the competent branch of the **federated unit/Constituent State** governments and if federal participation is required, by the competent branch of the federal government.

The federal government shall support, both financially and logistically, cooperative endeavours between the **federated units/Constituent States** or between local government units in different **federated units/Constituent States**. The federal government and the **federated units/Constituent States** shall accept documents issued by federal government and **federated unit/Constituent State** authorities and educational, medical and other public service institutions.

### Relationship between the Federal Government and the Constituent States

The federal government and the **Constituent States/ federated units** share the competences/powers of the federation according to the power-sharing principles designated by the federal constitution.

The federal government and the **federated units/ Constituent States** shall fully respect and not infringe upon the powers and functions of each other. The organs/public officials of either will not claim to have any right to give orders or instructions to the organs/public officials of the other in their areas of competence. When the federal government and the **Constituent States/federated units** decide to cooperate on an issue, the relationship between the federal organs/public official and the **Constituent State/federated units** organs/public officials shall be defined in the cooperation agreement.

The **Constituent States/federated units** shall be of equal status. Within the limits of the Constitution **and their territorial boundaries**, the **federated units/Constituent States**, shall **sovereignly** exercise the competences **vested in them by the Federal Constitution/not vested by the Constitution in the Federal Government**, organizing themselves freely under their own Constitutions.

The Federal Government **shall/may**, as appropriate, entrust the implementation of federal laws, including the collection of certain forms of taxes to the **Constituent States/federated units**.

The **Constituent States/federated units** shall enact laws and other norms (regulations and administrative acts), within their areas of competence. These shall not be contradictory to the Federal Constitution. **In case of conflict, the federal legislation shall prevail. Any norm enacted by the relevant federal organs shall not prevail over the norms enacted by the relevant authorities of the Constituent States** (Footnote: References relating to the issue of hierarchy between federal and **federated unit/Constituent State** laws will be finalized by the legal experts.).

## Past Acts and Treaties

Any act, whether of a legislative, executive or judicial nature, by any authority in Cyprus whatsoever, prior to entry into force of the settlement agreement, shall be recognized as valid provided it is not inconsistent with or repugnant to any other provision of the settlement agreement, **EU law or international law**<sup>20</sup>, and its effect shall continue following entry into force of the settlement agreement. **No one shall be able to contest the validity of such acts by reason of what occurred prior to entry into force of the Agreement.**

Matters of citizenship, immigration and properties affected by events since 1963, **international treaties concluded and debts incurred prior to the new state of affairs** and other matters shall be dealt with in a comprehensive way by the Agreement.<sup>21</sup>

**Any claims for liability or compensation arising from acts prior to the Agreement shall, insofar as they are not otherwise regulated by the provisions of this Agreement, be dealt with by the Constituent State from which the claimant hails.**

**The Greek Cypriot side believes that the issue of past acts should be discussed at a later stage and after a broader picture for the context of a comprehensive settlement has been drawn.**

<sup>20</sup> The TkCyps have indicated that they would accept reference to “international law.”

<sup>21</sup> The TkCyps have indicated that an “...agreed provision on past acts shall be inserted”.



## International Treaties<sup>22</sup> binding on the united Cyprus

1. International treaties binding on the united Cyprus shall be listed in an Annex to the settlement agreement.
2. In addition to the list of treaties of 2004, each side may submit an additional list of treaties, concluded ever since, including reservations and declarations to such treaties.
3. Each side will submit English-language texts of all treaties.
4. Each side may raise objections with respect to a specific treaty included in the list or reservation or declaration related to such a treaty on the grounds of incompatibility with the settlement agreement or with the existing joint convergence papers. All treaties submitted by the two sides shall be included in the list.
5. Where a treaty is determined to be incompatible with the settlement agreement or with the existing joint convergence papers, it will be excluded from the list. Treaties excluded from the list shall be denounced or otherwise terminated under international law. Should the existing convergence papers be amended, any side may request the inclusion of treaties initially excluded from the list or the exclusion of treaties initially included in the list on grounds of compatibility.
6. Decisions on the compatibility of a treaty shall be taken by consensus. If the two sides cannot reach a decision on the compatibility of a listed treaty or any reservation or declaration to such a treaty, before the settlement, the matter will be resolved after the settlement, according to the mechanism described in paragraphs 11-13 below.
7. Declarations and reservations which have been formulated before the entry into force of the comprehensive settlement because of the positions of the contracting parties regarding the Cyprus problem shall be withdrawn or rectified according to a procedure to be defined.
8. Treaties included in the settlement agreement shall apply to the entire territory of united Cyprus following the entry into force of the settlement agreement. However, a **Federated Unit/Constituent State** may ask the Federal Executive<sup>23</sup> during the first two years after the entry into force of the settlement agreement, to modify a treaty within the list, so that it shall not apply to that **Federated Unit/Constituent State**, if the treaty is of a nature that would permit its application to only one of the **Federated Units/Constituent States** and the scope of the treaty falls within the competence of the **Federated Units/Constituent States**. If the Federal Executive decides positively, it shall request the other High Contracting Party/Parties accordingly:
  - a. If the other High Contracting Party/Parties accepts the request, the treaty shall be modified accordingly;
  - b. If the other High Contracting Party/ Parties refuse(s) the request, the treaty shall remain in force for the entire territory of the united Cyprus;
  - c. If the other High Contracting Party/ Parties is either Greece or Turkey, the operation of the treaty shall be suspended in the territory of the requesting **Federated Unit/Constituent State**.

<sup>22</sup> The term treaty includes agreements in written form embodied in an instrument whatever their particular designation.

<sup>23</sup> For the purposes of this paper, this term means the main decision making organ of the Federal Executive as a whole.

9. If the treaty is on commercial<sup>24</sup> or cultural<sup>25</sup> matters and the conditions above related to the scope and nature of the treaty are satisfied, the Federal Executive shall request the other High Contracting Party/Parties accordingly. In that case, the procedure in 8 (a), (b) and (c) shall apply.
10. A **federated unit/Constituent State** may ask the Federal Executive within one year from the entry into force of the settlement agreement, to accord a transitional period of non-application of a treaty in the requesting **Federated Unit/ Constituent State**. If the Federal Executive decides positively, the procedure described in 8 (a), (b) and (c) shall apply.
11. During the first two years after the entry into force of the settlement agreement, a **Federated Unit/ Constituent State** may object to a particular treaty within the list or any reservation or declaration related to such treaty on grounds of incompatibility with the settlement agreement. Such objection shall be addressed to the Federal Executive.
12. Upon receipt of such objection, the Federal Executive shall, within two weeks, decide on the compatibility of the treaty with the settlement agreement. If it cannot reach a decision within that time, it shall immediately refer the matter to the Supreme Court which shall decide within a month.
13. Where a treaty is determined to be incompatible with the settlement agreement, united Cyprus shall denounce or otherwise terminate the treaty, as soon as possible, under international law.
14. Where, in accordance with the procedure in paragraphs 11 and 12, a determination is made that particular provisions of a treaty are incompatible with the settlement agreement and separable from other provisions of the treaty, united Cyprus shall seek a modification of that treaty. If the other High Contracting Party/Parties do (es) not agree to the modification, united Cyprus shall denounce or otherwise terminate the treaty, as soon as possible, under international law, unless otherwise decided by the Federal Executive.

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<sup>24</sup> **Commercial matters include economic investment and financial assistance. Subject to finalization of agreement on federal competences.**

<sup>25</sup> Cultural matters include religion, the arts, education and sports.

## SECTION 2: QUALIFIED OR CONDITIONAL CONVERGENCES (OR MATTERS ON WHICH THERE APPEARS TO BE A BRIDGABLE GAP)

### The Executive:

**Election:** During negotiations between DC and MAT, there was a conditional agreement on the election of the executive and on the appointment of the Council of Ministers: “The electorate as a whole, Greek Cypriots and Turkish Cypriots, vote simultaneously for both President and Vice-President. The Greek Cypriot votes for the Turkish Cypriot candidates shall be weighted so that they form the same percentage as the percentage of the Turkish Cypriot registered voters in the electorate as a whole (for example, if the Turkish Cypriot registered voters of the United Cyprus Republic form 20% of the total electorate, as is anticipated, then the Greek Cypriot votes for Turkish Cypriot candidates will also count as 20% of the total votes for Turkish Cypriot candidates). **This ratio cannot, in any case, exceed 20%. In the first election this ratio shall be 10%.** The candidate or candidates who receive the absolute majority of votes in this election shall be elected. If any candidate does not receive an absolute majority in the first round, then the two most popular candidates of the relevant community would proceed to a second round. In the second round, the winner would be the candidate with the majority of valid weighted votes as in the first round.”

“The Council of Ministers shall be composed of Greek and Turkish Cypriots; **on ratio of 7:3 / on ratio of 7:5; The Composition of Council of Ministers would be 8:5 [see note <sup>26</sup>].** Its members shall be appointed jointly by the President and the Vice President. If a joint decision is not possible, but a number of Ministers from either community can be agreed upon, these will be jointly appointed. The remaining Greek Cypriot Ministers will be appointed by the Greek Cypriot President/Vice President and the remaining Turkish Cypriot Ministers by the Turkish Cypriot President/Vice President. **The Minister of Foreign Affairs and the Minister of EU Affairs; the Minister of Finance and the Minister of Internal Affairs; shall not hail from the same Constituent State.**”<sup>27</sup>

Matters have moved on since this conditional agreement. **The Turkish Cypriot side was prepared to discuss weighted cross-voting in the context of a multilateral conference. The Greek Cypriot side responded that if the Turkish Cypriots do not confirm the agreement between DC and MAT (i.e. accept weighted cross-voting), there can be no rotation, but only a Greek Cypriot president and Turkish Cypriot vice-president.**

### The Legislature:

**Decision-making:** Both sides agreed that a ‘special majority’ should require 2/5 of sitting Senators from each CS/FU. **The Turkish Cypriots, however, maintain that a special majority should also require a majority of deputies present and voting in the House of Representative that includes at least ¼ of the deputies from each CS/FU. Greek Cypriots have proposed that**

<sup>26</sup> This convergence was conditional to agreement on external relations; a 6 year term (4:2 GC-TC); and the stipulation that while neither President nor vice-President would vote in the Council of Ministers, that if the President and Vice-president jointly disagree with a decision of the Council of /ministers on external relations, defence or security then they may vote against it.

<sup>27</sup> The TkCyps included “The Minister of Foreign Affairs and the Minister of EU Affairs; the Minister of Finance and the Minister of Internal Affairs; the Minister of Natural Resources and the Minister of Transportation; shall not hail from the same Constituent State.”

a simple majority of deputies sitting and voting in the House of Representatives should be sufficient.

### **Federal Public Service:**

**Composition:** The Greek Cypriots accept a 70:30 ratio. The Turkish Cypriots propose that 'At least 1/3 of FPS members at every level should hail from each constituent state'.

**Decision-making:** The sides currently disagree on decision-making within departments, with the Greek Cypriots wanting decisions to be taken by the Director while the Turkish Cypriots want decisions to be taken by Director and Deputy Director (except in special circumstances to be specified by law). However, the Turkish Cypriots appear to be prepared to accept the Greek Cypriot position on decision-making if their concerns about the composition of the FPS are addressed.

### **Federal Division of Competences:**

The Turkish Cypriots believe that 'residual authority' should rest with the two CS/FUs. The Greek Cypriots have not ruled this out but want to address it only after achieving full convergence on federal competences.

### **External Relations:**

**Ministry of External Relations and Diplomatic Service Composition:** The Greek Cypriots are prepared to accept that 'up to 30%' (which presumably means 30%) of the Diplomatic Service should be from each CS/FU. The Turkish Cypriots think it should be 33.3%.

### **Basic Principles:**

During negotiation in January 2010 there was an initial understanding on the following basic principles:

- i) The Federal Republic of Cyprus will have a single sovereignty which is indivisible and emanates equally from Greek Cypriots and Turkish Cypriots.
- ii) Within the limits of the Constitution, they exercise exclusively and independently those powers not vested by the Constitution in the federal government.



## PROPERTY

### **Explanatory Note**

In the Property chapter, the sides agreed to two written convergence papers, one with a list of categories and one setting out certain convergences related to principles and remedies for affected properties. These two papers will be set out first in their entirety in **Section 1**.

**Section 2** will detail the remainder of the negotiations that resulted in 1) positions contained in their separate position papers that demonstrated agreement in principle (a meeting of the minds) and 2) certain understandings confirmed during Leaders' meetings. Neither of these resulted in written joint convergence papers agreed to by the sides. Both sides also exchanged Comprehensive Proposals on Property on 6 Sept 2010 with detailed positions on detailed property provisions. In addition, at the 24 January 2012 meeting in Greentree with the UN Secretary-General, both sides put forward "common understandings on property". All of the proposals and understandings in principle were made on the basis that "nothing is agreed until everything is agreed".

## SECTION 1: CONVERGENCES

In November 2010, the sides reached certain convergences on the property regime for affected properties. The footnotes are from the original convergence paper as is the red and blue coloring of certain terms denoting language of each side (blue for GkCyp, red for TkCyp) that was not agreed. As the sides stated explicitly in the paper, the agreed convergences were without prejudice to the comprehensive proposals on the property issue submitted by the two sides in September 2010.

### *CONVERGENCES IDENTIFIED ON THE PROPERTY CHAPTER*

The Turkish Cypriot side and the Greek Cypriot side have identified the following convergences on the property regime for affected properties [Footnote 1: The agreed convergences are without prejudice to the comprehensive proposals on the property issue submitted by the two sides on 6 September 2010.]:

- 1- Public property, other than federal property, is the property of the Constituent State in which it is located. A list of federal properties shall be agreed upon and attached to the Comprehensive Settlement Agreement. Properties which are hali land owned by a **Constituent State/federated unit** can be used as alternative property reinstatement for **dispossessed owner/current user**.
- 2- Subject to agreement on the definition and scope of “public interest”, as well as on the necessary process, affected properties used for public interest purposes shall be expropriated by the **constituent state/federated unit** in which they are located and the dispossessed owner will be compensated.
- 3- The two sides are ready to accept the idea of an international donors conference in addition to a financial mechanism to be agreed upon for the payment of compensation.
- 4- The two sides are ready to accept the principle that any development on adversely affected properties shall start from those vacant where there is no current user or from those which are not used as dwelling.

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In November 2009, the sides concluded a convergence paper consisting of a list of types or categories of affected property. Footnotes from the original convergence paper are added into the text as is the red and blue coloring of certain terms denoting language of each side (blue for GkCyp, red for TkCyp) that was not agreed.

**TYPES/CATEGORIES OF AFFECTED PROPERTIES** [Footnote 1: Subject to an agreement on the principles and the criteria]

1. Property located in an area subject to territorial adjustment [Footnote 2: Subject to agreement on the treatment of properties in areas under territorial adjustment]
2. Property located in an area not subject to territorial adjustment [Footnote 3: Subject to agreement on the treatment of properties in areas not under territorial adjustment]
3. Property that was used for business purposes (including industrial buildings, packing houses etc) at the time of dispossession
4. Property on which buildings have been constructed after dispossession Property which was substantially developed [Footnote 4: Subject to agreement on the definition of the term substantially developed], including those developed by general infrastructure, after dispossession
5. Property which is being used for purposes of public benefit [Footnote 5: Subject to agreement on the definition of the term “public benefit”]
6. Property that was used for dwelling purposes by the dispossessed owner (Home) at the time of dispossession
7. Property that was used for dwelling purposes not by the dispossessed owner (House-Dwelling) at the time of dispossession
8. Property that is currently used [Footnote 6: Subject to agreement on the definition of the term “currently used”] by persons who are themselves dispossessed owners
9. Property that is currently used [Footnote 7: Subject to agreement on the definition of the term “currently used”] by persons who are not themselves dispossessed owners
10. Property that is not currently being used [Footnote 8: Subject to agreement on the definition of the term “currently used”]
11. Property that was/is plots of land and land with developmental potential
12. Property that was/is used as agricultural land
13. Physically damaged or destroyed properties after the time of dispossession which are impossible to reinstate
14. Properties which are not claimed within a determined period to be agreed, following the entry into force of the settlement
15. Property that was used as holiday home at the time of dispossession
16. Property that was/is [Footnote 9: The material date will be discussed] owned by natural persons
17. Property that was/is [Footnote 10: The material date will be discussed] owned by private family corporations or private family companies [Footnote 11: The definition of private family corporations or private family companies to be agreed]

18. Property that was/is [Footnote 12: The material date will be discussed] owned by other legal persons.
  19. Property owned by Evkaf, the Autocephalous Greek Orthodox Church of Cyprus as well as other Churches and other religious institutions. Properties that were used as a religious site in 1963/1974 [Footnote 13: The definition and extent of a religious site will be agreed upon]. Property owned by Evkaf, the Autocephalous Greek Orthodox Church of Cyprus as well as other Churches and religious institutions.
  20. Property that is either so small or is owned by such numbers of co-owners that render it indivisible or otherwise problematic.
  21. Property that has been sold [Footnote 14: Without prejudice to the position that this transaction is not legal] by the former user to a third party, who is not a dispossessed owner, following the time of dispossession.
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## SECTION 2: QUALIFIED CONVERGENCES AND CONVERGENCES IN PRINCIPLE/MEETING OF THE MINDS

### Principles, categories and definitions

Although there were no written convergences, both sides have recognized dispossessed owners' rights to their property.<sup>28</sup>

### Time period for definition of "affected property"

A property settlement must address all affected property from 1963 up to the entry into force of a comprehensive agreement.

### Remedies

Both sides agree on three remedies for dispossessed owners (in alphabetical order): compensation, exchange and reinstatement.

Both sides recognize the roles of choice and criteria in a property settlement.

Both sides have offered alternative property as another possible remedy.

Both sides recognize that emotional, persistent and continuous links to a property are factors to be considered when granting remedies/allocating property.<sup>29</sup>

<sup>28</sup> GkCyp positions: GkCyp proposals on remedies for dispossessed owners of affected property were subject to the provision that 60 per cent (or around 100,000) of Greek Cypriot displaced persons being able to return to their homes under Greek Cypriot administration and enjoy full reinstatement of their properties. The right of ownership of all affected properties is fully and unreservedly recognized. Although the rights to affected property are recognized, the allocation of remedies may be regulated by criteria. Greek Cypriots who were displaced in 1974 from areas which will constitute a part of the TkCyp federated unit, and their heirs, will have the right to decide if they wish to return to their places of origin, and to decide between restitution, compensation, exchange as regards their properties, in accordance with the criteria to be agreed. TkCyp positions: In regulating the exercise of property rights in Cyprus, due consideration will be given to striking a fair balance between the competing rights and interests of both the current users and the dispossessed owners in order to avoid planting seeds of new and potential conflicts and creating disproportionate new wrongs. The property dispute in Cyprus is essentially a political matter which will be resolved in accordance with the respect for individual rights of dispossessed owners and current users, as well as the fundamental principle of bi-zonality.

<sup>29</sup> GkCyp position: Properties used as a main dwelling (home) for a period of at least ten years by a person who proves that he/she a) has had long-term, steady and continuous use of the property and b) where relocation would create disproportionate new hardship compared to the owner's benefit, then the Property Commission will decide in accordance with guidelines to be agreed on. The sides need to discuss what constitutes long-term, steady and continuous use, disproportionate new hardship and who decides. TkCyp positions: If an affected property is being used by the current user as a home, meaning there is a concrete and persisting link between such property and the current user, the dispossessed owner of the said affected property shall be entitled to receive compensation. The



## Criteria

Both sides agree that there will be criteria regulating the allocation of remedies.

Both sides put forward a number of criteria and there was agreement in principle on certain categories that would either be exchanged or compensated but not reinstated<sup>30</sup> (with outstanding caveats and definitions to be agreed – see each side’s positions):

Properties used for purposes of the public interest. Both sides agreed that the definition of “public interest” still needs to be defined and that shared rules on compulsory acquisition can be used as a basis for discussions.<sup>31</sup>

Properties which have been substantially/significantly developed.<sup>32</sup>

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duration of the use of a particular property before the date of dispossession should be taken into consideration in determining the type of the redress.

<sup>30</sup> GkCyp positions: in addition to the categories above, in the following cases of property outside the areas of territorial adjustment, exchange could take place or compensation granted: Properties for which the owner has not opted for reinstatement or reinstatement is not possible on the basis of criteria; properties that are practically/factually impossible to reinstate; indivisible properties whose co-owners disagree on the desired remedy; properties that remain unclaimed within 3 years of the coming into force of the agreement; disputed properties whose ownership cannot be ascertained within 5 years of the coming into force of the agreement; property held in undivided shares, in case where all co-owners do not opt for the same remedy and the property cannot be divided between the co-owners. Property used in the public interest [not including private family corporations or companies]. Share ownership could also be a remedy for dispossessed owners where residential, tourist or commercial complexes have been constructed on the property. TkCyp positions: TkCyps require that the rights of dispossessed owners and current users are balanced, that criteria shall regulate property decisions in accordance with the principle of bi-zonality and there should be ceilings on reinstatement. “The Property Commission and the Sub-Commissions shall take decisions in accordance with the agreed principles and criteria about the property issue.” TkCyps stress the importance of being assured “clear” majority population and property ownership following a settlement. This should be known through the terms of the settlement and not be left to the choices of individual dispossessed owners. Legal redress for a dispossessed owner, on the one hand, and his heirs on the other, has to be different. As regards those who were not the owners of a particular property on the date of dispossession but who were only the users of the property can be compensated through different means of redress. The duration of the use of a particular property before the date of dispossession should be taken into consideration in determining the type of the redress.

<sup>31</sup> In the discussions on the category of “public interest/benefit”, the GkCyps argued that public benefit and genuine purpose needed to be tested legally in court cases against an agreed and simple law and not a list. Precedent and the jurisprudence established through supreme court judgments would settle what does, or does not constitute an appropriate benefit and purpose. The TkCyps looked for an agreed list of legitimate compulsory acquisitions in advance of an agreement. Such a list should be attached to the legally binding final settlement. The TkCyps seek to avoid large-scale lawsuits related to property used in the public benefit as they might overly burden the courts or trouble the peace of a post-settlement environment.

<sup>32</sup> GkCyp positions: The current user, who is also owner of other affected property, has the right of first refusal [to stay in the property] in the event of significant improvements to property which s/he has personally made (e.g., additions or improvements whose value is greater than the current value of the property without improvements).

Property used as a home or as a “main dwelling by a person” may not be reinstated. Both sides agree that duration of use of and links to property should be taken into account.<sup>33</sup>

Limitations on reinstatement for the affected property of institutions can be discussed.

Property “subsequently purchased” from a current user.<sup>34</sup>

Properties allocated for “social justice and rehabilitation” reasons (which may be covered by the “public interest” category or in another category).<sup>35</sup>

Affected property owned by the churches and Evkaf used as religious sites in 1963 or in 1974 shall be reinstated.

## Reinstatement

Both sides agree that reinstatement will be one of the remedies for dispossessed owners. Both sides agree that there will be criteria regulating the allocation of remedies, including reinstatement.<sup>36</sup>

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The sides need to discuss what constitutes substantial improvement and which cases are covered. Without prejudice to the position on settlers, the current user who is a purchaser of affected property, as the right of first refusal in the event that the property has also been significantly improved, that is additions or improvements made after date of dispossession and whose value is greater than the current value of the property without the improvements. **TkCyp positions: Significantly/substantially improved properties shall be compensated, not reinstated: If an affected property is substantially/significantly improved, the current user shall be entitled to receive title to that property in exchange for payment of the value of that property without any development.**

<sup>33</sup> GkCyp positions: Properties used as a main dwelling (home) for a period of at least ten years by a person who proves that he/she a) has had long-term, steady and continuous use of the property and b) where relocation would create disproportionate new hardship compared to the owner’s benefit, then the Property Commission will decide in accordance with guidelines to be agreed on. The sides need to discuss what constitutes long-term, steady and continuous use, disproportionate new hardship and who decides. **TkCyp positions: Properties being used as home: If an affected property is being used by the current user as a home, meaning that there is concrete and persisting link between such property and the current user, the dispossessed owner shall be compensated.**

<sup>34</sup> GkCyp positions: Without prejudice to the position on settlers, the current user who is a purchaser of affected property, as the right of first refusal in the event that the property has also been significantly improved, that is additions or improvements made after date of dispossession and whose value is greater than the current value of the property without the improvements. **TkCyp positions: Subsequent purchasers: Any purchaser or his/her successor in title, of an affected property shall be entitled to receive title to that property. The dispossessed owner shall be compensated.**

<sup>35</sup> GkCyp positions: With regard to the issue of ‘social justice and rehabilitation’ we expect more specific explanations, although we consider that this category comes under the already existing categories (e.g. public interest) and therefore does not require a new category. **TkCyp positions: Property used for public benefit, rehabilitation, social justice, and/or military purposes: Affected properties used for public benefit or allocated for rehabilitation or social justice purposes (including socially and economically disadvantaged groups) or required for military purposes shall be expropriated by the Constituent State in which it is located in exchange for payment of compensation.**

<sup>36</sup> The GkCyps stress the individual dispossessed owner’s right to choose reinstatement. Criteria for certain categories are to be negotiated. There must be “meaningful” reinstatement to GkCyp dispossessed owners of property in the TkCyp Federated Unit. **TkCyp positions: To ensure a clear majority of property ownership and to protect current users, reinstatement of GkCyp dispossessed owners in the TkCyp Constituent State will be restricted by criteria and should include a ceiling to ensure bi-zonality. Ceilings or quotas on GkCyp reinstatement in the**



Both sides propose that for certain categories of property, reinstatement would be granted automatically or immediately.<sup>37</sup> These categories differ for each side but there are certain convergences on the following:

Affected property owned by the churches and Evkaf used as religious sites in 1963 or in 1974 shall be reinstated.<sup>38</sup>

Both sides also agree that priority for reinstatement in time would be given to certain categories.

Properties located in areas described as “new forest”, property in military zones or former security areas that will be vacated and unallocated property may be reinstated without being subjected to criteria.<sup>39</sup>

### **Exchange - How to allocate the remedy, value “adversely affected property” that will be exchanged, what mechanism/process is used**

Both sides agree that exchange will be one of the remedies for dispossessed owners. And both sides agree that provisions in the agreement on the exchange procedure should satisfy legal norms and political needs.

There should not be any “double-dealing” and the remedy of exchange should avoid unjust enrichment.

An agreed body will facilitate the exchange remedy.<sup>40</sup>

The sides have come to an understanding (albeit qualified and not in a joint written convergence paper) that there will be a presumed consent with an “opt-out” provision could apply to TkCyp owners of property in the south who had previously executed “waivers” to the authorities in the north “exchanging” their properties for GkCyp properties in the north. Should a TkCyp “opt-out”, then he or she would have the option to file/claim for reinstatement of their properties in the south or to seek other remedies.

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TkCyp constituent state should be applied not only at the constituent state level but also at the village and town level.

<sup>37</sup> The GkCyps propose that “unused” properties be reinstated immediately/automatically. In the case of occupied properties, the GkCyps foresee a period of around four years for the reinstatement to take place. The TkCyps contest the GkCyp definition of “unutilized” or “unused” properties. They insist that the definition of “current user” include all types of use and all persons who were “allocated” GkCyp properties in the north.

<sup>38</sup> GkCyp positions: All other affected properties owned by the church or Evkaf should be treated the same as other legal persons. TkCyp position: affected properties belonging to Churches and Evkaf not used for religious purposes shall be compensated, not reinstated.

<sup>39</sup> TkCyp position: this would be subject to meeting the needs of TkCyps who will be resettled due to territorial adjustment first. These properties should also be subject to the overall ceiling on reinstatement.

<sup>40</sup> GkCyp positions: The Property Commission should act as an intermediary to facilitate exchanges primarily based on individual choice and match-making deals. GkCyps presented proposals that they were “willing” to accept an institution for development similar to the PDC proposed by the TkCyps but separate from the exchange remedy, under certain provisos (including that it function under the supervision and control of the International Property Commission) and subject to agreement that there would be only a single, International Property Commission (and no Sub-Commissions as in the TkCyp proposals). TkCyp positions: Collective process of exchange facilitated by a Property Development Corporation. The PDC is designed to overcome disparities in value between affected property in the north and the south, to facilitate urban transformation and to make exchange an attractive remedy.

Equally, any GkCyp property that had been “allocated” in “exchange” to such TkCyps “opting-out” would be reinstated to the GkCyp dispossessed owner should they choose.<sup>41</sup>

### **Development/property development corporation/land consolidation authority**

Both sides are “ready to accept the principle that any development on adversely affected properties shall start from those vacant where there is no current user or from those which are not used as a dwelling”.

Both sides agree that a property development corporation would be part of the overall settlement.<sup>42</sup>

### **Bizonality and property ownership**

Both sides accepted in principle that a property settlement would result in a majority ownership of property by a community in its respective constituent state/federated unit.<sup>43</sup>

<sup>41</sup> In 2011, the GkCyps put forward a new proposal for the mechanism of exchange: The longstanding position was that exchange of property was tied to the reaffirmation of choice of this remedy by individual owners. This is due the facts that the “so-called ‘property exchange’ took place without the consent of Greek Cypriot owners and does not fall within the category of ‘past acts’ that could be acceptable to the Greek Cypriot side following an overall settlement, since it is clearly and absolutely contrary to the international law and the ECHR case law. In a further effort to satisfy the concerns of the Turkish Cypriot side, however, we would be willing to further propose that Turkish Cypriot legitimate owners are presumed to have given their consent to exchange, unless they expressly object to it before the IIIPC (Independent, International, Immovable Property Commission). This is subject to the understanding that such owners will not necessarily be entitled to remain in the properties they currently occupy. TkCyp positions: Persons in the north who have not “transferred” their properties in the south for property in the north will be able to express their choice after a settlement. Affected properties of which the dispossessed owner who had signed a waiver document but objects to exchange after the entry into force of a settlement shall also be available for reinstatement, but only if the TkCyp objecting is still the current user of the relevant property. Other than these two categories, all other affected properties which have been allocated to dispossessed TkCyp owners (regardless of currently being used by another current user who is a successor in title) shall not be reinstated to the GkCyp dispossessed owners. The GkCyp exchange formula proposed would make possible to give an immovable property used by a TkCyp for the last 37 years to another TkCyp. This would result in serious economic and social problems in the TkCyp Constituent State.

<sup>42</sup> GkCyp positions: The GkCyps will accept an institution for development similar to the TkCyp-proposed PDC provided it is completely separate from the exchange remedy and provided it operates under the supervision and control of the Property Commission and has a limited mandate to develop properties on the basis of their developmental potential. Development of properties to be reinstated will be done only with the consent of the owner. A federal property consolidation authority will undertake consolidation in certain areas. All profits realized from consolidation schemes shall be used for the purposes of the IIIPC. TkCyp positions: The TkCyps proposed a “Property Development Corporation” with a wide-ranging mandate for island-wide development. PDC would be granted title to all TkCyp properties in the GkCyp Constituent State (other than those falling in the exceptions under “Exchange”) and would be the body responsible for the exchange remedy and developing adversely affected properties. The TkCyps also put forward the work done in connection with the transport of water from Turkey to Cyprus in an effort to elaborate how water would raise the living standards of certain regions and transform the quality and value of properties. Water can be used for financing the compensation fund and to gain new irrigational lands which will create new value increases.

<sup>43</sup> GkCyp positions: Although the GkCyps say they may accept settlement provisions that would result in a majority of property ownership for TkCyps in the TkCyp Constituent State, they do not want a limit specified in the agreement itself through a ceiling and the majority cannot be enforced over time. (See also “The question of restrictions on property purchases and sales post-settlement”) The acceptance of a solution resulting in TkCyps



### Ceilings/reinstatement entitlements

Both sides agree that the extent of reinstatement of property in a comprehensive settlement is related to the extent of territorial adjustment.

### Compensation - How to allocate the remedy; how to raise funds for compensation; loss of use

Both sides agree that compensation will be one of the remedies for dispossessed owners.

Both sides contemplate compensation for loss of use.<sup>44</sup>

Both sides contemplate deducting from compensation awards and/or loss of use any benefits the claimant has received (including benefits from the use of another affected property).<sup>45</sup>

Both contemplate instruments to raise financing for the compensation package (including securities backed/guaranteed by the underlying property (asset backed securities), bonds, and Guaranteed Financial Entitlements (GFEs)<sup>46</sup>).

If a GFE is issued, its value will be equal to the value of the affected property connected to it. The GFE will be registered on the affected property at the Land Registry.

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having majority of property in the TkCyp Federated Unit is subject to the TkCyps accepting the GkCyp proposal on territorial adjustment (around 100,000; 60% of GkCyp displaced persons (1974 figures) able to return in territorial adjustment areas). The GkCyps say that it is important, however, to define "majority ownership". TkCyp positions: TkCyps must have a clear majority of both population and ownership of property in the TkCyp Constituent State. The principle of bi-zonality is one of the basic parameters of solution established over decades of Cyprus negotiations since 1975 population exchange. According to the UN formulation, the property aspect of the principal of bi-zonality is reflected in the accepted notion that each Constituent State would be administered by one community 'which would be guaranteed a clear majority of the population and of land ownership in its area.'

<sup>44</sup> GkCyp positions: owners of the affected properties may claim compensation for the loss of use of their properties as well as compensation for non pecuniary loss, for the period between the date of dispossession and the date of the implementation of the decision of the Property Commission. TkCyp positions: Compensation for loss of use shall be paid by the Constituent State whose internal citizenship the claimant holds deducting the different types of benefits the claimant received since dispossession.

<sup>45</sup> GkCyp positions: In calculating the compensation, any benefits which the claimant had received from the use of another affected property for the whole duration he/she used such affected property, will be deducted. TkCyp positions: Compensation for loss of use shall be paid by the Constituent State whose internal citizenship the claimant holds deducting: a. specific benefits received from the authorities; b. the benefit created as a result of use in the past of any affected property; c. any income received by the applicant from affected properties; d. any rent paid in respect of affected properties; e. other allowances given to dispossessed owners; f. general development made by the relevant Constituent State before the comprehensive settlement; g. any entitlements received by or payable to the dispossessed owner whether before or after comprehensive settlement agreement for the period of lost use.

<sup>46</sup> GkCyps proposed to accept GFEs proposed by the TkCyps, subject to an agreement as to which properties will be subject to reinstatement and compensation; that the title deeds will be registered by the Property Commission to another person only after the total amount has been paid to the owner; that an auction is triggered if the amount is not paid within a reasonable time (5 to 10 years) and will be open to all European citizens without discrimination; and the GFE is effectively and reliably guaranteed by Turkey.

Both sides propose the payment of compensation over time. Both sides agree that if compensation is not paid within a reasonable time, the property in question may be sold at auction (subject to agreement on who may purchase property at these auctions).<sup>47</sup>

Both sides agree that there is a role for Turkey to guarantee compensation.<sup>48</sup>

### Valuation of property

Both sides mention a “current value” to be defined and agreed by the sides of affected property to be calculated for the purposes of compensation and exchange.

### Claims intake, decision-making and allocation of remedies

#### Property Commission(s)

Both sides envision a body or bodies (property commission/s) to process claims submitted by affected individuals and institutions.<sup>49</sup>

The property commission/s would issue decisions based on criteria.

Both sides agree that the property commission/s will be the body/ies responsible for valuing affected property in a settlement.

#### Property Court/Appeals Process

Both sides agree that there should be a specialized appeals body to hear appeals of Property Commission decisions.<sup>50</sup>

<sup>47</sup> See footnote above. TkCyp position: Regarding those immovable properties awaiting sale before the Property Commission, those who shall participate in this sale shall be the citizens of the Turkish Cypriot Constituent State. Other conditions and procedures for sale shall be decided by the laws of the Constituent State where the property is located.

<sup>48</sup> GkCyp position: the GFE must be effectively and reliably guaranteed by Turkey. TkCyp position: The owner of the GFE shall be paid from revenues from the public sale of the property. Any deficiencies that may arise shall be guaranteed by the Turkish Cypriot Constituent State and/or by the Republic of Turkey, if needed.

<sup>49</sup> The GkCyps propose an independent, international, immovable Property Commission (IIIPC). The TkCyps propose a Property Commission at the federal level with two Sub-Commissions at the Constituent State level.

<sup>50</sup> GkCyp positions: A Property Court will be established to deal with appeals to Property Commission decisions on points of law only. The Property Court shall be composed of 3 Greek Cypriots, 3 Turkish Cypriots and 3 international members. The Property Court shall only review challenges on points of law. TkCyp positions: A Property Court will be established to deal with appeals to Property Commission decisions and will be empowered to conduct an “independent review” (not just on points of law). The Property Court shall comprise an equal number of TkCyp and GkCyp members. The deadlock-resolving mechanism devised for the judiciary will apply.



### The question of restrictions on property purchases and sales post-settlement

Both sides agree that there may be some limitations on property purchases and sales post-settlement.<sup>51</sup> (See also the Economy and Aliens, Immigration, Asylum and Citizenship)

### Resettlement – alternative accommodation

Both sides agree that there should be protection against “forced” (arbitrary and unlawful) evictions.<sup>52</sup>

Suitable alternative accommodation shall be found before evictions are carried out.<sup>53</sup>

There will be time frames set for reinstatement/restitution of properties in areas outside the territorial adjustment areas.

<sup>51</sup> GkCyp position: In accordance with the EU acquis, any limitations on property sales/purchases must be non-discriminatory and have a set “transitional” time limit after which restrictions should be lifted. This “transitional time limit” will be 13 years or when the per capita income of the TkCyp Federated Unit reaches 85% of the per capita income of the GkCyp Federated Unit - whichever occurs first.<sup>51</sup> “Right to abode” includes the right to purchase property and which, according to the 29 January 2010 agreement, shall be granted after a “transitional period”. TkCyp position: The TkCyp side is seeking regulation, not prohibition, on the acquisition and sale of immovable property. They are ready to have this regulation formulated on a “non-discriminatory” basis. What should be taken into consideration here more than the length of the period is the difference in the economic level of the two Constituent States, in other words, purchasing power. The concern relates to the risk of damaging the property aspect of bi-zonality, in the event of liberalizing the acquisition of immovable property before closing the economic gap that exists today between the two sides. When the TkCyps say “regulation, not prohibition”, they mean a Constituent State may make the acquisition of immovable property conditional on permanent residency for a specific period of time. During this period, the acquisition of property by legal persons would be subject to the authorization of the Constituent States. This procedure shall be based on published, objective, stable and transparent criteria and shall be applied in a non-discriminatory manner. In order to permanently secure clear majority of land ownership in the future which is sine qua non for the bi-zonal character of united Cyprus, additional safeguards will be regulated with the provisions of the settlement agreement. Bi-zonality should be visible and not temporary. Any regulation on property purchases in the TkCyp Constituent State will be connected to economic purchase parity, permanent residence and will be non-discriminatory. DE said that he was “not suggesting here that we should debate the meaning of bi-zonality and transcribe it in the settlement agreement.” Rather, the vast majority of the TkCyps “want to see that the provisions of the settlement produced aforesaid result.” “Right to abode” in the 29 January 2010 agreement does not include any rights to purchase property.

<sup>52</sup> GkCyp position: Current users (“real users”) who were previously displaced should be protected against arbitrary or unlawful eviction. TkCyp position: all current users (not just those who gave up property in the south) should be protected against arbitrary or unlawful eviction.

<sup>53</sup> GkCyp position: Current users (“real users”) who were previously displaced subject to justifiable eviction should be found alternative accommodation within 3 years. Lack of alternatives should not hinder decisions of the Property Commission. TkCyp position: All current users whose properties are subject to restitution should be provided with a choice of alternatives for resettlement, as well as appropriate compensation for improvements. No order of the Property Commission shall require reinstatement of affected property to a dispossessed owner before a date which is: a. Three years after the [Comprehensive Settlement Agreement] CSA enters into force, for property which is unallocated at that date; or b. Six years after the CSA enters into force, in all other cases. Taking into consideration the role of the PDC in developing the adversely affected properties, the TkCyps believe that the PDC can be given the additional role of building / developing alternative accommodation to those who will relocate.

**Food for Thought**

A “Food for Thought” document on property and territory was circulated to the sides in February 2012 and extensive bilateral shuttle meetings took place to discuss it. Both sides saw positives and negatives in the document but were equally open to use it as a basis for negotiations. The “Food for Thought” included a “sliding scale” idea – establishing an inverse connection between territorial adjustment and reinstatement of property to one community in the other’s Constituent State/Federated Unit.

## EUROPEAN UNION MATTERS

### SECTION I: CONVERGENCES

#### The Ministry of EU Affairs

- *The term Federal Minister wherever to be found in these documents and until a final decision on this issue will be deemed to include Federal Secretary of State, Federal Councillor; and Head of Department and the term Ministry also means Department.*
- *The term “united Cyprus” is to be replaced by the name of the state which will apply after the entry into force of the comprehensive settlement<sup>54</sup>.*
- The handling of EU relations and EU matters which are listed in the Constitution will be a federal competence.
- A federal law shall define how to exercise this competence.
- The Federal Government shall cooperate with the **Constituent States/federated units** on EU issues that fall exclusively or predominantly within their competence. A cooperation agreement between the Federal Government and the **Constituent States/federated units** shall be concluded for that purpose.
- There shall be a Ministry of EU Affairs. The Federal Minister of EU Affairs and the Federal Minister of External Relations must not hail from the same **Constituent State/federated unit**.
- The Ministry of EU Affairs will comprise both federal public servants and public servants seconded from the **Constituent States/federated units** upon the request of the federal executive and with the consent of the **Constituent States/federated units**.

Indicative parameters of tasks of the Ministry of EU Affairs (the list is not exhaustive)<sup>55</sup>:

- i) Inform the Federal Executive and the **Constituent States/federated units** on relevant EU matters.
- ii) Inform and cooperate with the Federal Parliament on EU matters (e.g. inform EU Affairs Committee of the Federal Parliament on the positions of “united Cyprus” with regard to the priorities of each EU Council Presidency; inform in principle and on request the Federal Parliament on united Cyprus’ general positions

<sup>54</sup> Both paragraphs in italic relate to footnotes in black (agreed by both sides) in the GkCyp-updated Joint Paper 19 March 2010.

<sup>55</sup> Footnote in blue, GkCyp-updated Joint Paper 19 March 2010: “It is understood that a) bilateral relations with Member States of the EU and with third countries, b) the relations of the EU with third countries and c) the Common Foreign and Security Policy of the EU, fall within the competences of the Ministry for External Relations and not within those of the Ministry of EU Affairs”. The GkCyp footnote was not agreed to by the TkCyp side during the meeting of 16 March 2010. During the meeting of 19 March 2010, the GkCyp side requested the proposed text remain, albeit in blue.

concerning evolving EU Policies. This will be without prejudice to the responsibilities of line Ministries to inform and cooperate with the Federal Parliament in their specific fields.

- iii) Determine, in line with the Federal Constitution, the relevant Federal Ministry/**Constituent State/federated unit** Ministry to represent united Cyprus in the working groups/parties.
- iv) Participate in the process of determination of the positions to be supported by united Cyprus in the Council of the EU and its preparatory bodies.
- v) Coordinate the timely transposition of directives at Federal and **Constituent State/federated unit** level.
- vi) Notify the European Commission of all legislation which transposes directives or any other EU act for which notification will be required in the future.
- vii) Ensure the flow of information on EU issues to the authorities of the **Constituent States/federated units**. (A detailed list can be included at a later stage.)

7. If either **Constituent State/federated unit** needs it, there will be a certain period (e.g. for one year) during which the Ministry of EU Affairs will have the obligation to transmit to that **Constituent State/federated unit** all documents circulated in the EU institutions, to the extent that they are available to Member States.

8. Further discussion will take place on the coordination of the administrative phase of all infringement procedures as well as handling of all cases before the ECJ and CFI.

### **The Permanent Representation of United Cyprus to the EU**

- The Permanent Representative and the Deputy Permanent Representative must not hail from the same **Constituent State/federated unit**.
- The Permanent Representation shall be responsible for following all preparatory bodies of the Council.
- Public officers posted at the Permanent Representation irrespective of being employees of the Federal Government or of the **Constituent States/federated units**, will be seconded to the Ministry of EU Affairs. During the period of their secondment, the public officers of the **Constituent States/federated units** will be functionally integrated into the Federal Ministry of EU Affairs.
- Other than those public officers that will be seconded to the Ministry of EU Affairs, the **Constituent States/federated units** may maintain their own officers in the Permanent Representation of United Cyprus to the EU, in their field of competence. These officers will be placed on the diplomatic list of the Permanent Representation of the united Cyprus.
- The Permanent Representative and the Deputy Permanent Representative shall coordinate their actions, in their respective fields, at least once a week. Both the Permanent Representative and the Deputy Permanent Representative shall have full access to all documentation and archives of the Permanent Representation.



- Teleconference facilities shall be set up at the Permanent Representation in Brussels that will allow the participation / contribution of the Permanent and the Deputy Permanent Representative at the Coordination Group and Coordination Committee meetings.

*The Permanent Representation shall be in charge of:*

- Defending and promoting the interests of the united Cyprus in the EU.
- Providing effective communication and interaction between the authorities of united Cyprus and the institutions of the European Union.
- Disseminating recommendations, view-points and opinions on specialized questions and documents, which are produced and negotiated in the framework of the EU.
- Following and analyzing the progress of the European politics and informing accordingly the Federal and **Constituent State/federated unit** authorities with appropriate documents and comments.

*Composition of the Permanent Representation:*

- Postings of professional and diplomatic staff at the Permanent Representation of united Cyprus shall be decided by the Federal Executive.
- The Permanent Representation of united Cyprus to the EU shall comprise members of the diplomatic service, public officers of the Ministry of EU Affairs, as well as officers of other federal departments. It shall also comprise public officers seconded from the **Constituent States/federated units** and officers from the **Constituent States/federated units**.
- The Permanent Representative of united Cyprus to the EU shall, in principle, be designated from among the public officers of the Ministry of External Relations. The Federal Executive may in an appropriate case appoint, upon a proposal of the Minister for External Relations, a person who is not a public officer of the Federal Ministry for External Relations.
- The Deputy Permanent Representative of united Cyprus to the EU shall, in principle, be designated from among the public officers of the Ministry of EU Affairs. The Federal Executive may in an appropriate case appoint, upon a proposal of the Minister for EU Affairs, a person who is not a public officer of the Federal Ministry for EU Affairs.
- The representative of united Cyprus to the Political and Security Committee (PSC) shall in principle, be designated among the public officers of the Ministry of External Relations. The Federal Executive may in an appropriate case appoint, upon a proposal of the member of the Executive responsible for External Relations, a person who is not a public officer of the Federal Ministry for External Relations.

### **Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Federal government)**

- The Ministry of EU Affairs shall be responsible for the general determination and coordination of united Cyprus' positions with regard to the EU matters falling under an area of Federal competence.
- There will be two different determination/coordination procedures/mechanisms: one for issues that fall exclusively or predominantly within the areas of competence of the Federal Government and a separate one for issues which fall exclusively or predominantly within an area of competence of the **Constituent States/federated units**, in accordance with a cooperation agreement to be concluded. The Federal Minister of EU Affairs and the Federal Minister for External Relations shall, upon a proposal by the Federal Minister of EU Affairs, (if the Minister of EU Affairs doesn't make a proposal the Minister for External Relations shall have the right to do so) decide on whether, **on the basis of the provisions of the Federal Constitution**, a subject falls exclusively or predominantly within the area of competence of the federal government or within the area of competence of the **Constituent States/federated units** and ~~will~~ **shall** designate the competent coordination mechanism. ~~in line with the federal Constitution. In case of deadlock,~~ **Where the Ministers are unable to agree within ten working days from the date of receipt of the proposal or where they are uncertain about the legally correct decision to make,** the matter will be referred by any one of the two Ministers to the Federal Law Office for decision. The decision of the Ministers or of the Federal Law Office, **according to the case,** will be subject to ~~appeal to~~ **referral before** the Federal Supreme Court **by any one of the following: the Federal President, the Federal Vice-President, the Federal Attorney-General, the federated units.** The Federal Supreme Court, ~~which will have~~ **shall** make every possible effort to reach a decision within ten working days. **Any one of the Federal Ministers of EU Affairs or for External Relations as well as any one of the federated units shall have the right to refer the matter directly to the Federal Supreme Court for decision where the Federal Law Office does not notify its decision within ten working days from the date on which the matter was referred to it**<sup>56</sup>.
- In respect of EU matters which fall exclusively or predominantly within the areas of competence of the Federal Government, the Coordination Group shall determine united Cyprus' position in each Council configuration. The Coordination Group shall consist of the Federal Minister of EU Affairs or his/her representative as chairperson, the Federal Minister of External Relations or his/her representative and the competent Minister(s) for the matters to be discussed in each meeting or his/her/their representative(s)<sup>57</sup>. The Permanent Representative and the Deputy Permanent Representative or any officer of the

<sup>56</sup> Blue additions and alterations included in GkCyp-updated Joint Paper 19 March 2010. At the meeting of 19 March 2010, the GkCyp side suggested they be left, pending consideration by the TkCyp side, and would be removed if the TkCyp side objected at a later date.

<sup>57</sup> Footnote in red, GkCyp-updated Joint Paper 19 March 2010: **"If the matter falls predominantly within the areas of competence of the Federal government each constituent state shall have the right to send one representative to the coordination group"**.

Permanent Representation designated by the Permanent Representative or the Deputy Permanent Representative will have the right to participate, in person or via teleconference from Brussels, at all the Coordination Group meetings, without voting right.

- While taking the timeframe set by the EU presidency into consideration, the Ministers attending may decide to leave the right to position taking to the representatives they will assign for the matters being handled in the Council Working Groups and the COREPER. The level of representatives will be in accordance with the level of the meeting at the Council for which the coordination is sought. Representatives from the **Constituent State/federated unit** ministries shall also be consulted for the determination of united Cyprus' position<sup>58</sup>.
- The instructions to be determined by the Coordination Group regarding the positions to be defended in the EU Council and its preparatory bodies, may, where possible, leave a margin of flexibility for possible negotiations within the EU institutions. The Coordination Group shall also have the option, on any given matter, to give the representatives of Cyprus the right to choose the position that he considers most favourable to the interests of Cyprus.

*Working Group/Party Level:*

- All issues shall be communicated by the Federal Ministry for EU Affairs to the Coordination Group. The Coordination Group shall then decide whether to refer the matter to the lead Ministry or take the decision by itself. If the Coordination Group decides that the issue can be referred to the designated "lead Ministry" (i.e. the Ministry which has the main competence on a given subject), the latter will then undertake the necessary consultation with other interested parties and decide on Cyprus' position to be defended in the Council Working Group. If the Coordination Group decides that the issue is of political importance, then the issue is not referred to the "lead Ministry" and the decision is taken by the Coordination Group itself.

*COREPER (I-II) Level:*

- The Coordination Group shall decide united Cyprus' positions to be defended in COREPER meetings. The Coordination Group at this level will comprise senior officials from the Ministry of EU Affairs, Ministry of External Relations and all the Ministries competent for the specific matter(s) discussed in each given meeting. It shall meet at least once a week. Decisions in the Coordination Group concerning united Cyprus' position shall be taken by consensus.

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<sup>58</sup> GkCyp-updated Joint Paper of 19 March 2010 included footnote in red: "The Constituent States shall participate in the formulation and implementation of policy in federal external relations including those of the European Union relations."



*Council level:*

- United Cyprus' positions to be defended in the Council shall be decided by the Coordination Group meeting at ministerial level (i.e. Minister of EU Affairs, Minister of External Relations, Ministers of concerned Ministries). Such meetings of the Coordination Group shall take place prior to each Council meeting. Decisions will be taken by consensus.
- It is understood that at the above Coordination Group meetings, it will be possible for Ministers to be represented by an officer from their Ministry.
- The matter of decision making in cases of urgency will be discussed at a later stage.

**Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominately into an Area of Competence of the Constituent States/Federated Units)**

*Principles:*

- The Federal Minister of EU Affairs and the Federal Minister for External Relations shall, upon a proposal by the Federal Minister of EU Affairs, (if the Minister of EU Affairs doesn't make a proposal the Minister for External Relations shall have the right to do so) decide on whether, **on the basis of the provisions of the Federal Constitution**, a subject falls exclusively or predominantly within the area of competence of the federal government or within the area of competence of the **federated units/constituent states** and **will shall** designate the competent coordination mechanism. ~~in line with the federal Constitution. In case of deadlock,~~ **Where the Ministers are unable to agree within ten working days from the date of receipt of the proposal or where they are uncertain about the legally correct decision to make,** the matter will be referred by any one of the two **Ministers** to the Federal Law Office for decision. The decision of the **Ministers or of the Federal Law Office, according to the case,** will be subject to ~~appeal to~~ **referral before the Federal Supreme Court by any one of the following: the Federal President, the Federal Vice-President, the Federal Attorney-General, the federated units. The Federal Supreme Court, which will have** shall make every possible effort to reach a decision within ten working days. Any one of the **Federal Ministers of EU Affairs or for External Relations as well as any one of the federated units** shall have the right to refer the matter directly to the Federal Supreme Court for decision where the Federal Law Office does not notify its decision within ten working days from the date on which the matter was referred to it<sup>59</sup>.
- For issues that fall exclusively or predominantly into an area of competence of the **Constituent States/federated units**, the Ministry of EU Affairs shall be in charge of coordinating the positions to be defended in the Council configurations in accordance

<sup>59</sup> Blue additions and alterations included in GkCyp-updated Joint Paper 19 March 2010. At the meeting of 19 March 2010, the GkCyp side suggested they be left, pending consideration by the TkCyp side, and would be removed if the TkCyp side objected at a later date.



with the provisions of a cooperation agreement<sup>60</sup> to be concluded between the Federal Government and the **Constituent States/federated units**.

- In this context, a **Coordination Committee** shall be formed to determine united Cyprus' position in each Council configuration. The Coordination Committee shall consist of the following regular members: Minister of EU Affairs or his/her representative as chairperson, the Minister of External Relations or his/her representative and one competent Minister from each **Constituent State/federated unit**. In the Coordination Committee meetings, other representatives of the Federal Government or of the **Constituent States/federated units** may also participate without voting right. The Permanent Representative and the Deputy Permanent Representative or any officer of the Permanent Representation designated by the Permanent Representative or the Deputy Permanent Representative will have the right to participate, in person or via teleconference from Brussels, at all the Coordination **Committee** meetings, without voting right.
- The instructions to be determined by the Coordination Committee regarding the positions to be defended in the EU Council and its preparatory bodies, may, where possible, leave a margin of flexibility for possible negotiations within the EU institutions. The Coordination Committee shall also have the option, on any given matter, to give the representatives of Cyprus the right to choose the position that he considers most favourable to the interests of Cyprus.

*Working Group level:*

- The Ministry of EU Affairs will refer any matter that falls exclusively or predominantly into an area or competence of the **Constituent States/federated units** to the **Constituent State/federated unit** ministries/lead ministry of each **Constituent State/federated unit** and shall set a reasonable time for them to express their positions. In cases where the opinions sent by the **Constituent State/federated unit** ministries/lead ministries are consistent, the Ministry of EU Affairs forwards the agreed position to the **Constituent States/federated units** for reasons of ensuring consistency. If there are no objections from the **Constituent States/federated units**, then the agreed position will be forwarded to united Cyprus' representative in the Working Group.
- If any one of the **Constituent States/federated units** fails to submit a position within the reasonable time set by the Ministry of EU Affairs, the matter shall be referred to the Coordination Committee. The Ministry of EU Affairs shall make all reasonable efforts to hold Coordination Committee meetings within the time available for Cyprus to determine its position. If however it is not reasonably possible to refer the matter to the Coordination Committee, the Ministry of EU Affairs shall carry out the coordination with relevant ministries of **Constituent States/federated units** in order to send the position to Brussels in time.

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<sup>60</sup>Footnote in black, GkCyp-updated Joint Paper 19 March 2010: "A cooperation agreement should be concluded between the Federal Government and the **Constituent States/federated units** so as to regulate policy formulation, decision-making, representation and legal actions concerning EU affairs which fall exclusively or predominantly within an area of competence of the **Constituent States/federated units**".

- The Ministry of EU Affairs as well as any one of the competent **Constituent State/federated unit** ministries or, if there are several ministries involved in each **Constituent State/federated unit**, any one of the lead **Constituent State/federated unit** ministries, may also refer the matter to the Coordination Committee at any time.
- The Coordination Committee at officials/senior officials' level shall consist of a representative of the Minister of EU Affairs, a representative of the Minister of External Relations, a representative of the ministry/lead ministry of each of the **Constituent States/federated units**. The Ministry of EU Affairs shall chair and provide the secretariat for the Coordination Committee. The Coordination Committee shall take decisions by consensus.

*COREPER (I-II) level:*

- The Coordination Committee at senior officials' and/or officials' level shall decide on the united Cyprus' positions to be defended in COREPER meetings. For that purpose the Coordination Committee shall meet at least once a week. Decisions in the Coordination Committee concerning united Cyprus' position shall be taken by consensus.

*Council level:*

- United Cyprus' positions to be defended in the Council shall be decided by the Coordination Committee meeting at ministerial level (i.e. Minister of EU Affairs, Minister of External Relations, Ministers for the lead Ministries of each **Constituent State/federated unit**). Such meetings of the Coordination Committee shall take place prior to each Council meeting.
- It is understood that at the above Coordination Committee meetings, it will be possible for Ministers to be represented by an official from their Ministries.
- The matter of decision-making in cases of urgency will be discussed at a later stage.

## Implementation of the Acquis

### Determination of Internal Competence

- The Federal Government and the **federated units/constituent states** shall each be responsible for the implementation of EU legislation with regard to all issues which fall within their area of competence. The determination of competence (whether it is federal or federated) regarding every EU legal act to be applied in Cyprus and, if necessary, every part of such legal act, shall be done as early as possible before the adoption of the legal act in question by the competent EU institution or, if this for any reason is not possible, as early as possible after the said adoption.
- The determination of competence shall be done as follows: The Federal Minister of EU Affairs shall, for every EU legal act, address a proposal for the determination of competence to the Governments of the **federated units/constituent states** and provide them with a

reasonable time to react. If within the given time any **federated unit/constituent state** expresses a disagreement with the proposal, the matter shall be automatically referred to a Competences Committee. The said committee shall comprise the Federal Minister of EU Affairs or his representative as chairman, the Federal Minister of External Relations or his representative, the competent for the substantive issue Federal Minister or his representative and one Minister from each **federated unit/constituent state** or a representative thereof. The Committee, deciding by consensus, shall determine the competences of the Federal Government and of the **federated units/constituent states** in line with the Federal Constitution. ~~In case of deadlock, Where the Committee is unable to determine the competence within ten working days from the date on which the matter is referred to it,~~ the matter will be referred to the Federal Law Office for decision. ~~The decision of the Federal Law Office will~~ A decision on the determination of competence reached at any one of the stages described above shall be subject to ~~appeal to~~ referral before the Federal Supreme Court by any one of the following: the Federal President, the Federal Vice-President, the Federal Attorney-General, the federated units. The Federal Supreme Court ~~which will have~~ shall make every possible effort to reach a decision within ten working days. Any one of the Federal Ministers of EU Affairs or for External Relations as well as any one of the federated units shall have the right to refer the matter directly to the Federal Supreme Court for decision where the Federal Law Office does not notify its decision within ten working days from the date on which the matter was referred to it.<sup>61</sup>

- If an EU legal act or a part thereof, is decided with the above procedure, to be transposed only by the **constituent states/federated units**, the Federal Government shall not take any measure for the purposes related to the transposition or re-transposition of the same EU legal act or a part thereof into a Federal legislation.
- Each Federal or **Constituent State/federated unit** ministry shall implement the matters with regard to all EU issues which fall under their responsibility.

<sup>61</sup> In blue, alterations and proposals included in GkCyp-updated Joint Paper 19 March 2010. The GkCyp side suggested, during the meeting of 19 March 2010, that they might withdraw the language on 10 working-day time limits for decision-making. However, it was left in the paper in blue. A detailed footnote accompanied this section, outlining conditions under which its provisions would apply for any given EU legal act (GkCyp-updated Joint Paper 19 March 2010). An amended version of this paragraph was included by the GkCyp side in its proposals of 27 September 2011:

“The Federal Minister of EU Affairs and the Federal Minister for External Relations shall, upon a proposal by the Federal Minister of EU Affairs, (if the Minister of EU Affairs doesn’t make a proposal the Minister for External Relations shall have the right to do so) decide on whether, on the basis of the provisions of the Federal Constitution, a subject falls exclusively or predominantly within the area of competence of the federal government or within the area of competence of the federated units/constituent states and shall designate the competent coordination mechanism. Where the Ministers are unable to agree within ten working days from the date of receipt of the proposal or where they are uncertain about the legally correct decision to make, the matter will be referred by any one of the two Ministers to the Federal Law Office for decision. The decision of the Ministers or of the Federal Law Office, according to the case, will be subject to referral before the Federal Supreme Court by any one of the following: the Federal President, the Federal Vice-President, the Federal Attorney-General, the federated units. The Federal Supreme Court shall make every possible effort to reach a decision within ten working days. Any one of the Federal Ministers of EU Affairs or for External Relations as well as any one of the federated units shall have the right to refer the matter directly to the Federal Supreme Court for decision where the Federal Law Office does not notify its decision within ten working days from the date on which the matter was referred to it” (GkCyp Paper 27 September 2011).



- In the area of the Common Agricultural Policy, where as a result of the acts or omissions of a **Constituent State/federated unit**, a financial correction is imposed upon Cyprus, the **Constituent State/federated unit** responsible shall bear the burden of the said financial correction.<sup>62</sup>

### Derogations/Transitional Arrangements

- Arrangements **may/will** be necessary to delay the full application of the EU *acquis*<sup>63</sup>.
- The settlement will have to be accommodated into EU law<sup>64</sup>.

### Financial Support for the Unification

- Special funding will be needed for supporting the unification, in particular for favoring the economic and social development of the Turkish Cypriot Constituent State and of the areas that will be affected by territorial adjustments. The united Cyprus shall work to maximize the funds that can be obtained.
- The European Commission shall be called upon to provide a special funding for a speedy programme with a view to assisting the Federal Government and the Turkish Cypriot Constituent State to implement fully the Union's *acquis* as soon as possible.

### Infringements

- The **Constituent State/federated unit** which holds the responsibility for not taking the necessary or appropriate action within the context of an infringement procedure, which leads to a condemnation of united Cyprus by the ECJ, will be required to bear the cost of any lump sum and/or penalty payment to which united Cyprus is condemned.
- This will be done through the deduction of the said lump sum and/or penalty payment from the annual revenues which that particular **Constituent State/federated unit** would normally be entitled to receive from the federal budget.
- In case of infringement for which a **Constituent State/federated unit** is responsible, the federal government shall have the right to take the necessary measures, which are beyond its normal

<sup>62</sup> In blue, a GkCyp footnote stipulated that "**The provisions of this paragraph shall not apply if only one paying agency is set up for the whole of Cyprus**" (GkCyp-updated Joint Paper 19 March 2010).

<sup>63</sup> Convergence inferred as the lowest common denominator between the respective positions of the two sides as described by them in a series of papers.

<sup>64</sup> Convergence inferred as the lowest common denominator between the respective positions of the two sides on how best to accommodate the settlement into EU law. The sides differ as to how to go about accommodating a settlement into EU law. The GkCyp side has noted that "Protocol 10 offers a perfectly adequate legal framework for carrying out the adaptations of EU law that may be needed and provides the legal certainty and predictability that the Turkish Cypriot side is calling for" (GkCyp Paper 5 January 2011). The TkCyp side has noted that "A new protocol is required. It will have to be ratified by EU Member States" (TkCyp Paper 26 September 2011). The TkCyp side subsequently made a bridging proposal involving the use of two legal instruments, a draft Act of Adaptation and a new draft protocol (TkCyp paper 19 October 2011).



competence<sup>65</sup>. The Federal Government shall only have such right if there is a declaratory judgement against united Cyprus or, **in the case of non-transposition (but not improper transposition) of a directive**, if the Commission sends a letter of formal notice to united Cyprus under Article 258 TFEU, ~~regarding the lack of transposition (but not improper transposition) of a directive~~<sup>66</sup>.

- Where the Federal Government wishes to adopt measures beyond its normal competences following a judgement against united Cyprus, its right to do so shall be subject to a reasonable notice of not less than one month being given by the Federal Government to the **Constituent State/federated unit** which is responsible for the infringement and to the latter not adopting the necessary measures of compliance with the *acquis* within the given time.
- Where the Federal Government wishes to adopt measures beyond its normal competences following a letter of formal notice sent by the European Commission regarding a case of non transposition of a directive, its right to do so shall be subject to a reasonable notice of not less than three months being given to the **Constituent State/federated unit** which is responsible for the infringement and to the latter not adopting the necessary transposition measures within the given time.
- The scope of involvement of the Federal Government shall be limited to the infringement declared by the ECJ or, in the case of non adoption of measures transposing a directive, to the infringement targeted in the Commission's letter of formal notice. The necessary measures shall be taken by the Federal Government in cooperation with the **Constituent States/federated units**.
- The measures adopted by the Federal Government in lieu of the **Constituent states/federated units** as provided in paragraphs 3, 4, 5 and 6 above shall stay in force until the relevant measures of compliance are adopted by the **Constituent State/federated unit** and enter into force. In the meantime, the Federal Government shall cooperate with the **Constituent State/federated unit** for the purpose of adopting the necessary measures of compliance or transposition.
- The adoption by the Federal Government, in relation to infringements, of measures beyond its listed competences shall be regulated by the relevant cooperation agreement to be concluded between the Federal Government and the **Constituent State/federated unit** governments and shall be formulated in the form of "delegation of power" the exact nature of which will be discussed later.
- Lawyers designated by a **Constituent State/federated unit** will have the right to participate in the team representing United Cyprus before the ECJ, in cases of infringement arising from the actions or omissions of that **Constituent State/federated unit**<sup>67</sup>.

<sup>65</sup> Footnote in black, GkCyp-updated Joint Paper 19 March 2010: "The necessary amendment to cover the case on Competences will be effected".

<sup>66</sup> In black, GkCyp-updated Joint Paper 19 March 2010. During the meeting of 19 March 2010, the TkCyp side requested that the amendment to the GkCyp proposal remain in blue for the time being.

<sup>67</sup> In black, GkCyp-updated Joint Paper 19 March 2010. Includes footnote in black: "There shall be further discussion about the handling of cases before the ECJ and General Court, including those that will be initiated by the Federal Government at the request of the **Constituent States/ federated units**".

### Participation/Representation of United Cyprus at EU Institutions<sup>68</sup>

Participation/representation of united Cyprus at the EU institutions shall be on equal footing and through rotation.<sup>69</sup>

- European Parliament: 4 Greek Cypriot members and 2 Turkish Cypriot members.
- European Commission: Rotation system.
- ECJ and General Court: Rotation system. The 2 judges from united Cyprus at the ECJ and the General Court shall, **as far as possible**, not hail from the same Constituent State. In case united Cyprus is called to nominate one of the eight Advocates-General of the ECJ to be appointed by the Council, this nomination is made on a rotational basis.
- Court of Auditors: Rotation system.
- Committee of the Regions: 4 Greek Cypriot members and 2 Turkish Cypriot members.
- European Economic and Social Committee: 4 Greek Cypriot members and 2 Turkish Cypriot members.
- At all times and irrespective of the system of rotation that will be decided for each post, at least one of the holders of the following posts shall hail from each Constituent State: Commissioner, Judge to the ECJ and to the General Court, Advocate-General, member of the Court of Auditors.

## SECTION 2: POSITIONS OF THE SIDES, AS REFLECTED IN MOST RECENT JOINT PAPERS, WHERE THERE APPEARS TO BE A BRIDGABLE GAP

### Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Federal Government)

#### Proposal for the treatment of deadlocks:

- [G/C proposal: The issue of a mechanism allowing to overcome deadlocks is common to all the areas of competence of the federal executive. In the specific area of EU affairs, if no decision can be reached in a formation of the Coordination Group, the matter should

<sup>68</sup> Footnote in red, GkCyp-updated Joint Paper 19 March 2010: "This list has been formed following the early discussions as regards representation of united Cyprus at the EU institutions as soon as the comprehensive settlement comes into force. Further discussions shall take place regarding united Cyprus' representation at the various EU institutions including different configurations of the Council of the EU".

<sup>69</sup> The two sides have formally recorded their different views regarding the implications of the mechanism: "... which does not necessarily mean numerical equality/mean equal participation in all institutions. The Greek Cypriot side wishes to reaffirm its position that representation ratios and all relevant matters should be discussed as a package" [GkCyp-updated Joint Paper 19 March 2010].

be sent to a higher level formation of the same Group and, if a decision cannot be reached even in a meeting of the Group at ministerial level, the matter should be referred to the Federal Council of Ministers. It should also be possible to send a matter from a non-ministerial formation of the Coordination Group directly to the Federal Council of Ministers when the said formation deems it appropriate. The Federal Council of Ministers shall decide on all matters referred to it by the Coordination Group. If it is unable to reach a decision, the deadlock-breaking mechanism which will be decided overall for the executive should apply.]<sup>70</sup>

- [T/C position: If it is not possible to reach consensus at the Coordination Group then the issue concerned should be referred for a decision by the Federal Executive. If they also fail to reach a decision, then united Cyprus shall abstain.]<sup>71</sup>

### **Determination and Coordination of United Cyprus' Positions (Issues that Fall Exclusively or Predominantly into an Area of Competence of the Constituent States/Federated Units)**

#### *Council level:*

- T.C. proposal: As a matter of principle, it should be also registered that the Constituent States' representation at the Council Working Groups/parties and the various Council configurations shall be on a rotational basis<sup>72</sup>.

#### **Proposal for the treatment of deadlocks:**

- [G/C proposal: If no decision can be reached in a formation of the Coordination Committee, the matter should be sent to a higher level formation of the same Committee and, if a decision cannot be reached even in a meeting of the Committee at ministerial level, the matter should be referred to the Federal Council of Ministers. It should also be possible to send a matter from a non-ministerial formation of the Coordination Committee directly to the Federal Council of Ministers when the said formation deems it appropriate. The Federal Council of Ministers shall decide on all matters referred to it by the Coordination Committee. If it is unable to reach a decision, the deadlock-breaking mechanism which will be decided overall for the executive should apply.]<sup>73</sup>

<sup>70</sup> In blue, description of a deadlock-breaking mechanism included in GkCyp-updated Joint Paper 19 March 2010. TkCyp side agreed, on 19 March 2010, for it to be left pending further discussions at a later date.

<sup>71</sup> In red, GkCyp-updated Joint Paper 19 March 2010. Text was included in the Joint Papers by way of explanation of the remaining divergence between the sides on this issue.

<sup>72</sup> In red, GkCyp-updated Joint Paper 19 March 2010. Text was included in the Joint Papers by way of explanation of the remaining divergence between the sides on this issue.

<sup>73</sup> In blue, description of a deadlock-breaking mechanism included in GkCyp-updated Joint Paper 19 March 2010. TkCyp side agreed, on 19 March 2010, for it to be left pending further discussions at a later date.



- [T/C position: If it is not possible to reach consensus at the Coordination Committee then the issue concerned should be referred for a decision by the Federal Executive. If they also fail to reach a decision, then united Cyprus shall abstain.]<sup>74</sup>

### Derogations/Transitional Arrangements

1. In order to achieve and sustain a bi-zonal bi-communal federation with political equality, where there shall be a Federal Government with a single international personality, as well as a Turkish Cypriot Constituent State and a Greek Cypriot Constituent State, which will be of equal status, there shall be a need for derogations from the application of the *acquis* in the Turkish Cypriot Constituent State.
2. These derogations shall include derogations of political nature, transitional periods of technical nature as well as safeguard measures which can be invoked in case of serious economic disturbances in the Turkish Cypriot Constituent State.
3. With a view to ensuring legal certainty and security of the terms of the comprehensive settlement, the deviations from the *acquis* that will be included in the comprehensive settlement should be legally secured within the EU legal system. The position of the Turkish Cypriot side is that for legal certainty and security, the deviations from the *acquis* should be defined and guaranteed in a primary source of EU law.
4. The position of the Greek Cypriot side regarding the definition of bi-zonality is well-known to the Turkish Cypriot side so as not to require further elaboration. The Greek Cypriot position is that bi-zonality does not mean majorities of population or privately owned land.
5. In accordance with the relevant International law and in accordance with the spirit and practice of the European Union, permanent derogations cannot be made, particularly regarding the free movement of persons, goods and capital and the freedom to provide services which, together, form the internal market of the Union. However, the Greek Cypriot side is prepared to discuss the areas where transitional arrangements may be necessary and the duration of these arrangements. When these arrangements are agreed in principle, Greek and Turkish Cypriots shall be able to support them together before the Commission.
6. Protocol 10 was devised by the EU and adopted as an annex of the Act of Accession of Cyprus to the EU as the way forward for accommodating under conditions of legal certainty but without the need of a new intergovernmental conference, the signature of a treaty and a ratification process by all member states, a future agreement on the Cyprus problem. This remains valid today and the said Protocol offers legal certainty for the comprehensive settlement that we aim at achieving.

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<sup>74</sup> In red, GkCyp-updated Joint Paper 19 March 2010. Text was included in the Joint Papers by way of explanation of the remaining divergence between the sides on this issue.



### **Participation/Representation of United Cyprus at EU Institutions**

- Council of the EU: As a matter of principle, it should be also registered that the Constituent States' representation at the Council Working Groups and the various Council configurations shall be on a rotational basis. Meaning that, throughout 1 year period, each Constituent State will have a 6 month representation and will be responsible for the communication of positions determined in the Coordination Group.

## ECONOMY

### SECTION 1: CONVERGENCES

#### Competences and Representation in Economy-Related Institutions

*Note: for representation and other competence issues not listed here see also Governance and Power-sharing*

##### **Federal Ministry of Finance**

There shall be a Federal Ministry of Finance. A federal law shall provide for the competences of this Ministry and shall include inter alia the following:

- Macroeconomic policy
- Medium Term Fiscal Framework
- Macroeconomic stability
- Public debt management (*as defined*)
- All indirect taxation<sup>75</sup>
- Responsible for monitoring and the preparation of draft legislation related to the capital markets, the cooperative and banking sector, insurance sector and provident funds (*as defined*)
- Responsible for monitoring and the preparation of draft bilateral agreements related to financial subjects
- Management of federal property
- Planning, implementing and monitoring the federal budget
- Management of the treasury

##### **Federal Ministry with a name to be defined/agreed**

There shall be a Federal Ministry of *a term to be defined but including convergence*. A federal law shall provide for the competences of this Ministry and shall include inter alia the following:

- Implementation of convergence policies (*to be defined*) to enhance the growth potentials and to narrow the economic inequalities between the two **Constituent States/federated units**
- Designing and developing the federal economic and trade policy
- *A role with respect to large infrastructural projects to be defined*

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<sup>75</sup> See also: Budget, debt management and taxation.

- Participation in the EU structural actions. This doesn't preclude the right of the **Constituent States/federated units** and regions to participate in the EU structural actions.
- Weights and measures
- Intellectual property
- Economic convergence, labour rights and the following social issues:
  - a) Protection of the family (particularly mothers and children)
  - b) Right to an adequate standard of living
  - c) The right to the enjoyment of the highest attainable standard of physical and mental health

### **Federal Statistical Office**

A Federal Statistical Office shall be established. The Federal Statistical Office shall be able to collect all statistical data, either directly or indirectly from federal or **Constituent State/federated unit** Ministries, it requires for the production of federal statistics for the whole country in order to fulfill its international obligations to the EU, OECD, UN, etc. This does not preclude the right of the **Constituent States/federated units** to have their own statistical offices, which will collect and disseminate their own statistics. The statistical offices of the **Constituent States/federated units** shall be able to collect statistical data from the Ministries of the Federal Government as well.

## **Central Bank, Currency and Financial Supervision**

### **Status of the Central Bank**

United Cyprus shall have one independent Central Bank at federal level.

### **Branch**

Within the single Central Bank structure, there shall exist a branch in the T/C **Constituent State/federated unit** *for a period to be agreed.*

The branch should as necessary, in order to overcome any possible problems due to existing language barrier, differences in reporting formats and off-site supervision systems, accommodate specific departments or sections of the Central Bank, following partial reallocation of staff, as dictated by the operational needs of the Central Bank. *The functions of the branch are to be agreed.*

### **Governing body and board of directors**

Governor, Deputy Governor shall be appointed by the Federal Government on merit. The Governor and the Deputy-Governor of the Central Bank shall not hail from the same **Constituent**

**State/federated unit.** They shall be appointed by the executive organ for a non renewable term of office of seven years.

Board of Directors shall be appointed by the Federal Government on merit.

### **Working languages**

Working languages shall be Greek and Turkish. English may also be used as appropriate.

### **Central Bank functions**

- Contributing to a stability-oriented monetary policy within the Euro-system.
- Supplying euro notes and coins. The legal tender of united Cyprus will be the Euro, as provided in the EU Treaty.
- Implementing ECB monetary policy decisions.
- *Subject to agreement on representation*, regulating, supervising and monitoring the banking sector and other non-bank financial institutions such as leasing, factoring, consumer lending and mortgage institutions.
- Participating in, operating, regulating and overseeing any payments and security settlement systems in united Cyprus.
- Ensuring the stability of the financial system.
- Supervisory standards – as prescribed by the *acquis*.
- Managing public debts of the Federal Government and **Constituent States/federated units**, if assigned to it by the appropriate federal or **Constituent State/federated unit** authorities.
- Compiling statistical data.

### **Currency and arrangements for the Turkish lira**

The legal tender of the Federation shall be Euro.

**Constituent States/Federated units** will be able to make necessary provisions for the use of any foreign currency as a means of payment and for receipts, including public procurements, contracts and purchase of goods and services.

The Federal Central Bank (FCB) shall act as a banker and agent for the Federal Government and for the **Constituent States/Federated units**. Banking arrangements shall be provided by the FCB for the **Constituent States/Federated units** and the Federal Government including transfers and accounts in any foreign currency, if assigned to it by the Federal or a **Constituent State/Federated unit** government.



United Cyprus will have a liberalized capital account, where arrangements will be made to provide Federal government and **Constituent States/ Federated units** with services from the FCB. Arrangements shall be made by the Federal Central Bank for the necessary amount of TL to be available as foreign reserve asset based on the market needs.

### **Transitional Period for TL**

There shall be a maximum one year transitional period for the TL, including any period between the signing and coming into force of the settlement agreement, unless otherwise decided by the Board of the Federal Central Bank. This is required to allow for a smooth changeover and preparation for the changeover adjustments for the accounting and software etc. This period may include, on a voluntary basis, double indication of prices of Euro and TL.

### **Other transitional issues relating to the Turkish lira**

Any transitional issues related to the cash changeover period will be decided based on past experience (communication campaign, technical preparations etc).

### **Provident Funds**

Provident funds (*categories of which are to be defined*) and professional pension schemes should be licensed and supervised at federal level, *subject to agreement on representation*.

### **Preventing Money Laundering and Financing of Terrorism**

Single regulation and authority at federal level in line with EU directives and recommendations of other international bodies such as FATF, etc.

## **Macroeconomic Management**

### **Internal Stability Pact**

An Internal Stability Pact (*stipulated in a manner to be defined*) shall safeguard that specific deficit, debt, revenue and expenditure rules that will apply to all levels of government (Federal Government, **Constituent States/federated units** and local authorities).

The Internal Stability Pact will further provide that the public deficit shall not exceed the threshold of 3% GDP and the debt of the threshold of 60% GDP for each and every level of

government: Federal, **Constituent State/federated unit**. It should also provide for binding constraints on borrowing by local authorities.

Appropriate transitional arrangements will be agreed for the T/C **Constituent State/federated unit**.

### **Respect the Provisions of the Stability and Growth Pact (SGP) of the EU**

Achieve the national medium term budgetary objective, safeguard the long term sustainability of public finances, improve the quality of public finances and promote the implementation of the Lisbon Strategy.

### **Tax Advisory Body (Taxation Council)**

In order to contribute towards an efficient administration of taxes and safeguard an effective co-ordination of taxation policies between the Federal Government and the **Constituent States/federated units**, an advisory Taxation Council as a coordinating body shall be instituted. This advisory body will try to put in place an effective framework to prevent harmful competition in the area of business taxation. The framework should be based on EU legislation and the EU Code of Conduct of Business Taxation and the definition of a minimum tax rate and harmonization of the tax base.

The Council shall be composed of the Inland Revenue Directors of the **Constituent States/federated units** and two representatives from the Federal Ministry of Finance.

The Council shall be chaired by one of the representatives of the Federal Minister.

The Body shall strive for consensus and if not it should reflect diverging views.

The Council shall have advisory functions on the following issues:

- Adaptation of Federal Government and **Constituent State/federated unit** tax policies to EU acquis and EU policy framework – representation in EU relevant working groups and technical committees
- Inter-jurisdictional cooperation in matters of international taxation, including international double taxation agreements, under the auspices of the federal Ministry of Finance
- Providing advice on federal tax reform proposals
- Providing advice on the appropriation of Federal taxes to the **Constituent States/federated units**
- Coordination and integration of information and communication networks, the development of procedures and means of exchange of information, the development of mutual knowledge,

the harmonization of computer software, guidelines on *modus operandi*, coordination of awareness campaigns, and coordination of training programs for government officials

- Coordination of Federal Government and **Constituent State/federated unit** tax policies, with the aim of avoiding harmful tax competition, including the implementation and monitoring of EU legislation and the EU Code of Conduct
- Identification of issues arising between the Federal Government and the **Constituent State/federated unit** taxation systems and proposals for cooperative solutions to problems as they may arise. This includes taxation issues concerning commuters from and businesses in the SBA

### Advisory Council for Macroeconomic Stability

Advisory Council for Macroeconomic Stability shall ensure coordination and cooperation of macroeconomic policies among the Federal Government and the **Constituent States/federated units**.

The composition and functions of the Council shall be as follows:

- In order to ensure the coordination of budgetary policies at Federal Government and **Constituent States/federated units**, including the issuance of new debt, a MSC will be instituted.
- The Council shall be composed of members, *the number of which is to be agreed*: the Ministers responsible for finance and economy in the Federal Government and **Constituent States/federated units**. The Council shall be chaired by the Federal Minister of Finance.
- The Council shall have the following advisory functions:
  - (i) Formation of a common view on the state and development of the economy as a whole and the convergence of the **Constituent State/federated unit** economies.
  - (ii) Coordination of Federal Government and **Constituent State/federated unit** budgetary policies for the current and subsequent years, within a medium-term framework, with a view to maintaining macroeconomic stability and growth and achieving economic convergence.
  - (iii) Coordination of public borrowing, monitoring of public debt levels at all levels of government, including local authorities.

*Subject to certain conditions to be agreed*, the Responsibilities of the Council shall be as follows:

- Making a proposal on the Medium Term Objective (MTO) with regard to the fiscal position, in structural terms, of unified Cyprus *using targets to be agreed*.
- “Assessing” (*in a manner to be agreed*) that budgetary policies at all levels of government are consistent with a target of an annual improvement of the fiscal balance of 0,5 pp of GDP in structural terms, until the MTO is reached, in line with the provisions of the revised SGP, as well as with the provisions of the Internal Stability Pact.

- Monitoring that budgetary policies at all levels of government, including in particular at the federal level attach due attention to development, social and convergence policies.
- Monitoring the implementation of transitional arrangements with regard to the application of the provisions of the SGP and ascertaining that they are phased out as appropriate.
- Seeking international assistance, with a view to covering expenditure as well as liabilities that may relate to the settlement of the Cyprus problem.
- “Assessing” (*in a manner to be agreed*) that fiscal policies are consistent with keeping the public debt to GDP ratio below the threshold of 60%.
- Monitoring, borrowing and suggesting limits on overall debt and deficit levels, across all levels of government (federal, **Constituent State/federated unit** and local).
- Promoting, under its auspices, an expert study, with a view to assessing the long term fiscal sustainability of unified Cyprus, with a particular focus on pensions and health care. Based on the findings of the expert study appropriate measures should be suggested, aiming at safeguarding long term fiscal sustainability at all levels of Cyprus.
- Suggesting and promoting policies, aiming at avoiding entering into an excessive deficit procedure.

## Budget, Debt Management and Taxation

### Federal Budget: minister’s responsibilities

Assignment of sufficient powers to the Federal Minister of Finance stipulated in the appropriate legislation (the law regulating the main principles on the implementation of the budget). The Federal Finance Minister must have the authority for the preparation and implementation of a multiyear fiscal framework and the annual budget, including the monitoring and control of spending flows. In particular, the Federal Minister of Finance should have the authority to set spending limits during the fiscal year and adjust accordingly the fiscal policy in response to the prevailing economic circumstances. The budget of the Federal Government should be based on a MTBF (Medium Term Budgetary Framework). (The same provision in respect of the budgets of the **Constituent States/federated units** is agreed to be inserted in an appropriate heading).

A constitutional provision shall prohibit the legislature from having the right of approving increased budgetary appropriations, compared to the ones submitted by the executive. Similarly, the legislature should be prohibited from having the right of approving legislation other than the legislation submitted by the executive that leads to decreased revenue.

### Approval of the Federal Budget and Tax Laws

There shall be federal tax laws.

The Federal Budget and the Tax Laws shall be approved by Special Majority, subject to agreement on the rules of Special Majority Voting in the Parliament.



Should the Parliament fail to approve the Federal Budget, the matter will be referred to the deadlock resolving mechanism of the Legislature and in the meantime, the provisions of the budget of the previous year will be put into force.

The first budget shall be approved as part of the Comprehensive Settlement Agreement.

### Federal Government expenditures & EU budget - general principles

United Cyprus' contributions to the EU Budget, e.g. indirect tax refunds (VAT refunds, excise and import duty refunds), shall be part of the Federal Government's budget.

There shall be no transfer payments from the Federal Government to the **Constituent States/federated units** other than earmarked and budgeted expenditures. This doesn't touch upon the reallocation of the Federal Government revenue and all funds given by the EU.

### Indirect Taxation

All Indirect taxes shall be imposed by Federal Government. (The **Constituent States/federated units** may impose indirect taxes other than those imposed for the time by the Federal Government. If a service is provided in both **Constituent States/federated units**, neither **Constituent State/ federated unit** may impose indirect taxation for that service).

The Federal Government shall confer upon the **Constituent States/federated units** a portion of its revenue from indirect taxation as provided for by *a law, the nature of which is to be defined*.

The Federal Government **shall as appropriate/may** entrust the collection of indirect taxes to the **Constituent State/federated unit** authorities.

The *acquis* on VAT and excise duties and the same rates shall be applied *from a time to be agreed*. Scope for different VAT rates between the two **Constituent States/federated units** that can be applied to a limited number of non-tradeable services and for a limited period for practical reasons shall be examined, provided that they do not promote harmful tax competition and are in line with the *acquis*.

### Direct Taxation

They shall be levied by **Constituent States/federated units**.

An agreement between the **Constituent States/federated units** shall regulate the following principles:

a) Taxing Commuting Workers:

Commuters' wages and salaries shall be taxed based on residence criteria. To enforce compliance, income tax shall be withheld at the source (i.e., in the place of work) at a single flat rate and its proceeds shall be transferred to the **Constituent State/federated unit** of residence, after deduction of an administrative fee.

b) Taxing Businesses:

Companies' profits generated within united Cyprus that have economic activities in both **Constituent States/federated units** shall be taxed where the management control is performed, after deduction of an administrative fee. Three-factor (turnover, payroll, fixed assets) formula shall be developed to apportion profits generated within united Cyprus.

c) Taxing Other Incomes (*as defined*)

Taxes on interest, dividends and royalties shall be withheld at source. *The final recipient of such taxes is to be agreed.*

**Public Debt Management**

The management and monitoring of the public debt (*as defined*) should be at the federal level. However, the responsibility of servicing of the debt is on the **Constituent State/federated unit** whose population has been the recipient. Any additional domestic and foreign borrowing undertaken by the **Constituent States/federated units** following the unification of Cyprus shall be the responsibility of the **Constituent States/federated units**, subject to the conditions set in the Internal Stability Pact. The same applies with respect to any guarantees extended by the **Constituent States/federated units**.

There will be a guaranteeing mechanism instituted at the federal level to facilitate guarantees to **Constituent State/federated unit** borrowing from international organizations under the condition of compliance with the Internal Stability Pact provisions and subject to approval of the relevant institutions at the federal level.

**Debts incurred prior to a settlement**

**Debts incurred prior to settlement, including the responsibility for debts incurred since 1963**

Debt contracted before the agreement shall be under the responsibility of the **Constituent State/federated unit**, whose population has been the recipient.

Existing guarantees extended or other financial obligations undertaken during the same period shall be the responsibility of the **Constituent State/federated unit**, whose population has been the recipient.

An exhaustive list of all debts and guarantees for the Federal Government and the **Constituent States/federated units** shall be prepared and published.

Greece and Turkey will be invited to write off debts.

### **Supporting the Cost of Settlement**

Involvement of the Federal Government in such areas like funding, guarantees and interaction with relevant international institutions shall be needed. The extent to which the Federal Government will involve in supporting the cost of the settlement (*as defined*) shall be discussed.

## **Revenue Allocation and EU Funds**

### **Allocation of Federal Government Revenues**

- a) The indirect taxes and VAT of the federal budget shall be reallocated to the **Constituent States/ Federated units** based on the following principles:
  - A portion of indirect taxes shall be reallocated to the **Constituent States/ Federated units** on the basis of population;
  - A portion *to be defined* will be reallocated to the Constituent States/ Federated units on the basis of *a measure of GDP to be defined*;
- b) 6% of the total Federal Government revenues shall be allocated to a development budget provision of the Federal Budget of which:
  - a. 5/6 will be used for *infrastructure-related projects as defined* in the Turkish Cypriot **Constituent State/ Federated unit** and;
  - b. 1/6 will be used for *infrastructure-related projects as defined* in the Greek Cypriot **Constituent State/ Federated unit**.

The aforementioned (a and b) will be terminated after a period of thirteen years or when the per capita income of the Turkish Cypriot **Constituent State/ Federated unit** reaches 85% of the per capita income of the Greek Cypriot **Constituent State/ Federated unit**, whichever occurs first. Before the expiration of the thirteen years period the federal government analyze the situation and shall prolong the aforementioned period if necessary.

- Thereafter, the total revenue of the Federal government, after agreed amount is kept for the Federal Government expenditures, will be allocated to the **Constituent States/ Federated units** based on *a measure of GDP to be defined*.
- The percentages of the above portions as well as all figures will be verified and agreed upon before the entry into force of the Comprehensive Settlement Agreement.

### **Utilization of EU Funds**

The 'National Strategic Reference Framework' (NSRF) for Cyprus shall be prepared at the federal level. The Turkish Cypriot **Constituent State/ Federated unit** and the Greek Cypriot

**Constituent State/Federated unit** shall be defined as NUTS 2 level areas, so as to enable them to benefit from EU funds effectively which will be in line with the NSRF document.<sup>76</sup>

Need for a joint effort to persuade EU side to provide a special 'peace package' to the island after a solution.

### **Financial support for the unification<sup>77</sup>**

- Special funding will be needed for supporting the unification, in particular for favoring the economic and social development of the Turkish Cypriot Constituent State and of the areas that will be affected by territorial adjustments. The united Cyprus shall work to maximize the funds that can be obtained.
- The European Commission shall be called upon to provide a special funding for a speedy programme with a view to assisting the Federal Government and the Turkish Cypriot Constituent State to implement fully the Union's *acquis* as soon as possible.

### **Other positions on EU funds**

The effective participation of united Cyprus in the structural actions of the EU (Structural Funds, Cohesion Fund) so as to maximize the amounts received and utilized to the benefit of Cyprus as a whole, according to the EU rules and to minimize the risk of not absorbing the allocated for co-financing funds. T/C side must get more of EU funds.

Turkish Cypriot **Constituent State/federated unit** shall get more of EU funds earmarked for united Cyprus until convergence is achieved.

## **Internal Market and EU Harmonisation**

### **Movement of persons & right of establishment**

Cyprus and EU citizens can move freely around the island.

There should be free movement of workers throughout the whole of the island.

Any limitations on residence shall not prevent freedom of movement throughout Cyprus. Cypriot citizens shall have the right of abode (*as defined*) throughout Cyprus which will enable them to work, practice a trade or profession, establish and operate a business or engage in any economic activity.<sup>78</sup>

<sup>76</sup> See additional GkCyp and TkCyp positions on this issue.

<sup>77</sup> See also EU matters.

<sup>78</sup> For conditionalities on this issue, see also Citizenship Narrative: Aliens, Immigration, Asylum and Citizenship.



**Agencies**

There shall not be sole distributorship rights in united Cyprus.

**Movement of goods, services and capital**

*Transitional arrangements for movement of goods, services and capital are to be agreed.*

**Transitional arrangements for central bank, banking and non-bank financial sectors**

Any entity not complying fully with the *acquis* requirements shall not be granted the EU passport.

Upon reaching a settlement, no new licences shall be granted to any entity of the broader financial sector, unless there is full compliance with the relevant *acquis* requirements.

Transitional arrangements shall be limited in time and scope and be justified on purely technical grounds.

Transitional period should not compromise the robustness of the banking sector and the level playing field.

Transitional period should not compromise or undermine the single legal entity and the efficient functioning of the Central Bank.

Any transitional arrangements agreed by the two sides on merging Central Bank operations and payment systems may need to be approved/accommodated by the competent EU bodies, including the ECB.

**Freedoms relating to Turkey and Greece**

*See Citizenship*

**Harmonisation and EU screening**

*See EU matters*

## Other transitional arrangements

### **General note**

With regard to the necessary adaptation of united Cyprus to the EU acquis, it is acknowledged that the T/C **Constituent State/federated unit** would require transitional periods *subject to conditions to be agreed*.

### **Health and Safety at Work**

Screening process of the T/C side with the EU will determine the conditions and duration of the transitional period.

### **Conditions of Employment**

Screening process of the T/C side with the EU will determine the conditions and duration of the transitional period.

### **Company Law**

*Arrangements on company law are to be agreed.*

### **State Aid**

#### State Aid Incentives

All state aid schemes should be compatible with the acquis communautaire.

As long as they comply with EU rules, each **Constituent State/federated unit** can apply its own incentive scheme, subject however to the provisions of the Stability and Growth Pact and the Internal Stability Pact.

*Other issues relating to state aid and state aid control to be agreed.*

### **Labour, Social Security, Pensions and Healthcare**

#### Social Security Standards

Social security standards and the social security systems in both **Constituent States/federated units** shall aim at gradual convergence.

Both **Constituent States/federated units** shall comply with social security standards of ILO and Council of Europe.

A generalized approach of the transposition of the international obligations to internal legislation of the **Constituent States/federated units** will be devised taking into account the agreement reached on EU Matters on similar issues).

Need a mechanism *at a government level to be agreed* for cooperation and coordination between the social security systems of the two **Constituent States/federated units**.

**Pensions** (Pension rights of federal civil servants will be secured by law.)

**Constituent States/federated units** shall have their own pension schemes.

A framework shall be established between two **Constituent States/federated units** to enable gradual harmonization for pension parameters. (A generalized approach of the transposition of the international obligations to internal legislation of the **Constituent States/federated units** will be devised taking into account the agreement reached on EU Matters on similar issues).

Need a mechanism **at federal level** of cooperation and coordination of the social security systems of the two **Constituent States/federated units**.

**Social protection and portability of pensions** (Footnote: A generalized approach of the transposition of the international obligations to internal legislation of the **Constituent States/federated units** will be devised taking into account the agreement reached on EU Matters on similar issues.)

Mutual recognition and portability of pension rights and benefits. This shall be done in accordance with the EU Regulation 1408 and with agreed principles to enable recognition and portability between the G/C and T/C systems.

Where a commuter does not satisfy the conditions for independent pension from the social security system of one **Constituent State/federated unit**, the number of years of contributions s/he made to the other **Constituent State/federated unit's** system should be taken into account and a *pro rata* pension should be paid.

**Health Care Systems** (Footnote: A generalized approach of the transposition of the international obligations to internal legislation of the **Constituent States/federated units** will be devised taking into account the agreement reached on EU Matters on similar issues.)

Need a mechanism **at federal level** of cooperation and coordination of the health care systems of the two **Constituent States/federated units**.

Access of residents of one **Constituent State/federated unit** to the health care system of the other, for emergencies, or if they pay for it, or for special treatment not offered in the particular **Constituent State/federated unit**. Compensatory payments to be arranged.

## **Mutual Recognition and Enforcement of Standards**

*Mutual Recognition and enforcement of standards in relation to professional certificates, university diplomas, regulated professions, tertiary education and the circulation of pharmaceuticals to be agreed.*



## **ALIENS, IMMIGRATION, ASYLUM AND CITIZENSHIP**

### **Explanatory Note**

The issue of Aliens, Immigration, Asylum and Citizenship has been discussed as a subset of the governance chapter. The Greek Cypriots have indicated that the issue should be considered as a separate chapter while the Turkish Cypriot have stated that it should be dealt with in the context of the responsibilities of the federal and constituent state governance structures.

The sides achieved agreement in January 2010, which stipulated that decisions on the numbers entitled to citizenship and the criteria for future citizenship would be made “in a way that the demographic ratio between the two communities is not altered”. Subsequently, the sides agreed in the presence of the Secretary-General that a total number of all persons from both sides would automatically be considered citizens of the united Cyprus with the coming into force of the comprehensive settlement agreement and that the total number would be determined by an exchange of figures. Demographic censuses have now been carried out on both sides.

The convergences listed below from the 29 January 2010 document include the Four Freedoms for Turkish nationals with respect to the island of Cyprus, which are relevant to a number of areas of the negotiations. They are included here because, according to the 29 January 2010 convergence document, agreement on the four freedoms is contingent upon reaching agreement on the issue of Turkish nationals.

## **SECTION 1: CONVERGENCES**

### **Four Freedoms**

1. The Greek Cypriot side agrees in principle on the enjoyment of four freedoms by Turkish nationals.
2. The Greek Cypriot side expressed the need to consult Greece first regarding the above.
3. Both leaders will jointly appeal to the EU in order to initiate the necessary work on how this can be accommodated by the EU. This appeal will be done through the Good Offices Mission of the UNSG.
4. This will be done in a way that the demographic ratio between the two communities is not altered.
5. The above is subject to reaching agreement on the issue of Turkish nationals/settlers residing in the north before the solution.

**Citizenship**

6. People who were citizens before December 1963, that is when the common will of the two communities existed, as well as their spouses, children and descendants will become citizens of the united republic.
7. A total number of all persons from both sides determined by an exchange of data that will be supported by the censuses will be considered citizens of the united Cyprus with the entry into force of the comprehensive settlement.
8. Citizenship, Aliens, Immigration and Asylum shall be the competence of the Federal Government.

**Permanent Residency**

9. Greek Cypriots and Turkish Cypriots shall have the right to establish their permanent residence in the other Constituent State subject to agreed limitations. Permanent residents shall be entitled to exercise some political rights (i.e. Local and EU elections) based on that status.
10. Any limitations on residence shall not prevent freedom of movement throughout Cyprus. Cypriot citizens shall have the right of abode (\*This term does not have any legal connotations which are the same as the legal term "residence") throughout Cyprus, which will enable them to work, practice a trade or profession, establish and operate a business or engage in any economic activity.

**Internal citizenship**

11. Those who have "internal citizenship" will have all political rights but they will vote for the Senate with the community to which they belong<sup>79</sup>.

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<sup>79</sup> Voting for the senate will be on a communal basis, while voting for the House of Representatives will be on the basis of internal citizenship, subject to agreement on the parameters for obtaining internal citizenship.

## SECURITY AND GUARANTEES

### SECTION 1: CONVERGENCES

#### External security (Security and Guarantees)

1. In 2011, the sides met 23 times to discuss security, either as a stand-alone topic, or in the context of another meeting. The sides only discussed policing issues and external security was not addressed. Prior to this, the sides exchanged papers on security issues in Jul 2009. During this exchange, the sides reached one convergence (or shared position). Both sides intend that external security should be addressed at a multilateral conference and there has been no substantive discussion of external security.

#### External aspects of security

2. On issues related to external security or military issues, the sides reached one convergence. This “convergence” was reached through an exchange of papers on security issues in July 2009. This position has not been rebutted since that exchange of papers.

#### 3. Demilitarization

- a. The sides agree that the Greek Cypriot National Guard, Turkish Cypriot Security Force and all reserve forces should be demilitarized.
- b. The key divergences are that for the Greek Cypriots, **all Turkish and Greek military forces must withdraw**. For the Turkish Cypriots, **Greek and Turkish forces would draw down to an agreed level** – this would mean a continuation of the Treaty of Alliance provisions.

4. Future of the Treaties of Guarantee and Alliance. The future of the treaties is the macro issue within the external security discussion. Here, the parties have opposed views. **The Greek Cypriot position is that both treaties must be terminated. The Turkish Cypriot position is that the treaties continue *mutatis mutandis*. In their view, the treaties are necessary to protect the independence, territorial integrity, security and constitutional order of federal Cyprus and constituent state/federated unit.**

5. For a more detailed description of positions on non-core issues in External Aspects of Security, see the July 2009 documents. Please note that these positions have not been discussed at either the leaders', or representatives' level.

## Internal security

1. In 2011, the sides met 23 times to discuss security, either as a stand-alone topic, or in the context of another meeting. The first meeting was on 30 Mar 2011 and the last was on 14 Oct 2011.
2. Equal representation in the federal police and the Joint Investigation Authority (JIA).
  - a. The sides have agreed that the Federal Police and the JIA will be composed of an equal number of personnel hailing from each Constituent State/Federated Unit.
  - b. The Chief and Deputy Chief of each organization shall not hail from the same Constituent State/Federated Unit.
  - c. The numbers of members from each Constituent State/Federated Unit in each rank and unit shall be equal. If a post becomes vacant at the Federal Police and the JIA, it shall be filled within these bodies with an acting appointment from the same Constituent State/Federated Unit until a permanent appointment is made of a qualified person hailing from that Constituent State/Federated Unit.
  - e. The appointments of Chief of Federal Police and the Chief of JIA shall be made by the federal executive.
3. Mutual assistance.
  - a. The sides have agreed that Constituent State/Federated Unit police force and federal police will receive mutual assistance on areas within their competence<sup>1</sup>.
  - b. This is without prejudice to the principle that Constituent State/Federated Unit police are stationed and operate exclusively within own Constituent State/Federated Unit and are responsible for law enforcement within that Constituent State/Federated Unit.
  - c. Whether there will be a single cooperation agreement which will also include these issues or a separate cooperation agreement on police matters will remain open and will be finalized under the Governance chapter.
4. Police numbers and ratio of officers at the Constituent State/Federated Unit level.

The sides have largely agreed on the size of the respective Constituent State/Federated Unit police forces.

- a. The police forces will maintain an overall 60:40 ratio (Greek Cypriot: Turkish Cypriot). The Greek Cypriot Federated Unit force will comprise 5,000 officers and the TC Constituent State force will comprise 3,100 officers. Either side may increase its police force by a strength of four officers per 1,000 new inhabitants. The Constituent



State/Federated Unit is to inform the Federal Government if it chooses to increase its police strength and the other Constituent State/Federated Unit may increase its forces to meet the 60:40 ratio.

- b. The sides have not agreed on the number of civilian personnel employed within the Constituent State/Federated Unit police forces (**the Greek Cypriot position is that agreement has been reached on a maximum of 100 civilian personnel (10%),** but the Turkish Cypriots have not confirmed this).
- c. The sides have agreed on the strength of the Federal Police. It will total 1,500 officers, with 100 officers assigned to the JIA: thus, the actual strength of the Federal Police will be 1,400 officers. The Federal Police will be drawn equally from each Constituent State/Federated unit.
- d. The sides have agreed on the strength of the JIA. It will comprise 300 officers: 100 drawn from the Federal Police (equal numbers from each Constituent State/Federated Unit), plus 100 officers from the Turkish Cypriot Constituent State police force and 100 officers from the Greek Cypriot Federated Unit police force.

5. Responsibilities of Chief and Deputy Chief of Federal Police and JIA

The sides have agreed on the responsibilities of the Chief and Deputy Chief of the Federal Police and JIA.

- a. Federal Police: The Chief of Federal Police receives instructions from the relevant federal minister. The administration of the Federal Police is vested in the Chief. The Deputy Chief acts as the Deputy to the Chief. The Deputy Chief exercises the powers of the Chief in the event of absence or temporary incapacity.
- b. JIA: The Chief of the JIA is responsible to federal Attorney-General. The Deputy Chief acts as Deputy to the Chief. The Deputy Chief exercises the powers of Chief in the event of absence or temporary incapacity.
- c. Federal police and JIA: Within the Federal Police and the JIA, the Chief and Deputy Chief decide on enlistments, appointments, promotions, dismissals and disciplinary penalties based on recommendations of board of officers comprised of equal numbers of officers from the Constituent States/Federated Units<sup>3</sup>.
- d. The Deputy Chief: The Deputy Chief shall act as the Deputy to the Chief in the performance of duties and shall have power to exercise any activity/duty which may by law be exercised by the Chief in the absence/temporary incapacity of the Chief. The Deputy Chief will exercise powers delegated by Chief on all aspects of daily administration (staffing, logistics, and finance) of the Federal Police/JIA.

6. Competences of the Federal Police

7. The sides have agreed on the competences of the Federal Police. Unless footnoted noted below, the bulk of competences were agreed on 30 Sep 2011.

- a. The Federal Police will be responsible for: offences against Federal constitutional order; protection of federal officials, buildings and property as well as foreign dignitaries and missions; surveillance and control of united Cyprus' borders including identity control; search and rescue; the investigation of offences against federal law within the limits of the afore-mentioned competences other than where investigation is requested by the Federal Police to be carried out by the JIA; and, cooperation with Interpol and Europol.
- b. The inclusion of SAR is with a TC clarification that united Cyprus has two SAR regions with two Constituent State/Federated Unit SAR centres "which shall operate under the efficient organization, coordination and cooperation by the Federal SAR centre in accordance with the relevant provision of 1979 Hamburg Convention, the Chicago Convention on Civil Aviation and federal law on SAR."
- c. The inclusion of "offences against the Federal constitutional order" is with a Greek Cypriot clarification that it is "without prejudice to the position of the Turkish Cypriot side regarding the scope of application of the Treaty of Guarantee and the Treaty of Alliance"

8. Competence of the JIA

9. The sides have agreed largely agreed on the competences of the JIA. Unless footnoted below, the bulk of competences were agreed on 30 Sep 2011.

- a. Federal state security, terrorism, money laundering, kidnapping, corruption, drug trafficking, piracy, hi-tech offences against united Cyprus, organized crime, spying, treason, counterfeiting, and human trafficking. Investigate illegal use of weapons, acts of violence, incitement to violence against united Cyprus, the Constituent States/Federated Units or the Guarantor Powers (this is the position of the TCs and is a noted divergence). Cooperation with federal police and the police of the Constituent States via cooperation agreements. Investigate violation of police duties by staff of JIA.
- b. The inclusion of "Federal state security" is "without prejudice to the position of the Turkish Cypriot side regarding the scope of application of the Treaty of Guarantee and the Treaty of Alliance"
- c. The key divergence is that Greek Cypriots have not accepted the inclusion of violence against the Guarantor Powers.

10. Competence of the Constituent State/Federated Unit police

11. The sides have reached agreement on the competences of the Constituent State/Federated Unit police forces.

- a. The police force of each Constituent State/Federated Unit is to be stationed and operate exclusively within the territory of that Constituent State/Federated Unit.
- b. The police of a Constituent State/Federated Unit shall be responsible for the protection and enforcement of law and order and public safety within that Constituent State/Federated Unit.
- c. Constituent State/Federated Unit police forces shall be responsible for offences against federal laws other than those prescribed above for Federal Police and JIA. This is without prejudice to the power of the federal legislature to assign the responsibility of investigation of any future offences to the Federal Police, JIA or Constituent State/Federated Unit police forces.

## TERRITORY

### SECTION 1: CONVERGENCES

None.

### SECTION 2: QUALIFIED CONVERGENCES AND CONVERGENCES IN PRINCIPLE/MEETING OF THE MINDS

#### Setting the future boundary between the GkCyp and TkCyp Constituent State/Federated Unit

Both sides agree that there will be a territorial adjustment.<sup>80</sup>

Both sides have agreed to discuss maps and figures related to territory during the last phase of the process leading up to a multilateral conference.<sup>81</sup>

#### Resettlement/Relocation

Although there is no written convergence, both Leaders agreed that those people who will be relocated out of areas subject to territorial adjustment will be looked after and have suitable alternative accommodation provided to them.<sup>82</sup>

<sup>80</sup> GkCyp position: There must be “substantial territorial adjustment” – one that ensures that “approximately 100,000 GkCyp displaced persons (1974 figures) return in areas subject to territorial adjustment.” The more GkCyp returns under Territorial Adjustment, the more the GkCyps are willing to agree to criteria limiting reinstatement in the new TkCyp Federated Unit. TkCyp position: Territorial Adjustment cannot be a means to “shrink” the new TkCyp Constituent State so much so that bizonality is “easy” to obtain and therefore meaningless. Dislocation of TkCyps should be limited as much as possible. “Righting” past wrongs should not create “disproportionate” new ones.

<sup>81</sup> GkCyp position: The sides have already entered the last stage of the process and therefore there should be a “specific and substantial” discussion on territory and property together. TkCyp position: Both sides have agreed to discuss maps and figures during the last stage of the process and this last or “later stage is the moment of reaching the 5-party conference”.

<sup>82</sup> GkCyps “wish to assure the TkCyps that appropriate arrangements will be formulated for issues related to the financial aspects of return and relocation for both GkCyps and TkCyps.” Both “indigenous” TkCyps who choose to relocate and “non-indigenous” TkCyps who will have to relocate will be relocated only after they have been given alternative accommodation and property in the TkCyp Federated Unit. For the purposes of relocation and return, a Relocation and Return Board will be established under the International Immovable Property Commission. The Board shall consist of an equal number of GkCyps, TkCyps and foreign members. The GkCyp side is ready to discuss detailed terms of reference for the Board, timetables and sources of funding for the relocation from and return to the areas under territorial adjustment. Strong UN administrative role for a specific time period in territorial adjustment areas supervising the in order to ensure that the territorial adjustment proceeds as agreed and that alternative accommodation is provided or built where necessary. TkCyp position: Satisfactory arrangements must be made on resettlement that will provide for the following: 1) standards of alternative housing; 2) length of time to construct alternative housing and source of financing which will be required; 3) amount of compensation to be



### Funds for resettlement

Although there are no written convergences, both sides agree that there should be a fund to provide for the needs of those who will move due to territorial adjustment, including compensation for assets lost, where applicable.<sup>83</sup>

### Jurisdictional issues/legal status - Legal regime and effective control in each section of adjusted territory

Both sides agreed that there should be a role for the United Nations for a period of time in the areas subject to territorial adjustment.<sup>84</sup>

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provided to people; and 4) whether and how it will be ensured that they will have a social environment and means of livelihood and that they are provided property that is at least equivalent to the property taken. If a number of people are going to be relocated as a result of any territorial adjustment, regardless of whether or not they were refugees in the past, of their citizenship status and ethnic origin, there should be a basic treatment accorded to them by virtue of the fact that they are human beings. Whether they are relocated or not, the provision of basic facilities and standards to all those who will be affected by any territorial adjustment is a requisite of human rights. Undoubtedly, in addition to the basic minimum standards that will be provided for every individual affected by territorial adjustment, factors such as the property rights of individuals, their past refugee status their citizenship status should also be taken into account, bearing in mind the necessity to provide some special and additional rights and means. Taking into consideration the role of the PDC in developing the adversely affected properties, the TkCyps believe that the PDC could be given the additional role of building / developing alternative accommodation to those who will relocate.

<sup>83</sup> GkCyp position: In an effort to meet the concerns of the TkCyp side for possible problems which will arise as a result of territorial adjustments, the GkCyps proposed that relocation would only take place after individuals have been given alternative accommodation and that appropriate arrangements will be formulated for issues related to the financial aspects of return and relocation for both GkCyps and TkCyps. A Relocation and Return Board will be established under the International Immovable Property Commission. The Board shall consist of an equal number of GkCyps, TkCyps and foreign members. The GkCyp side is ready to discuss detailed terms of reference for the Board, timetables and sources of funding for the relocation from and return to the areas under territorial adjustment. TkCyp position: The GkCyp side, as the party who demands that a large number of people return to their pre-1974 homes, should make concrete explanations about the source of financing which will be required to construct alternative housing and amount of compensation and should propose a detailed and specific plan describing this fund and the source of money. The Property Development Corporation could be responsible for the funds for providing alternative accommodation.

<sup>84</sup> GkCyp position: All the areas under territorial adjustment should legally form part of the GkCyp federated unit from the moment of the signing of the Agreement. The administration of these areas will be assigned by the GkCyp Federated Unit to the United Nations for a specific time period. The United Nations will use GkCyp and TkCyp personnel to meet the needs of the administration. This is an issue of fundamental importance to the GkCyps, as regards the need to ensure that territorial adjustment will be implemented. Territorial adjustment areas shall be put under United Nations administration by the GkCyp federated unit (delegated powers) for a specific period to be agreed. The United Nations will use Greek Cypriot and Turkish Cypriot personnel to meet the needs of the administration. At the end of this period, the administration of these areas will be transferred to the GkCyp Federated Unit. TkCyp position: Until the territory in question is transferred, public order and security in areas subject to territorial adjustment must be under the responsibility of the police forces and other relevant authorities of the Constituent State that transfers the territory. The actual implementation of relocation procedures by the

### Phasing of withdrawal; monitoring; security aspects

Although there is no written convergence, both Leaders agree in principle that the territorial adjustment would be phased in some way.<sup>85</sup>

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authorities of the Constituent State that will make the transfer will minimise the possibility of friction/conflict. It can be contemplated that a possible UN force on the island will be given a role of observing whether or not the conditions agreed by the parties have been fulfilled when the actual transfer takes place.

<sup>85</sup> GkCyp position: This is an issue of fundamental importance to the GkCyPs, as regards the need to ensure that territorial adjustment will be implemented. For the purposes of relocation and return, a Relocation and Return Board will be established under the International Immovable Property Commission. The Council (sic) shall consist of an equal number of GkCyPs, TkCyPs and foreign members. The GkCyp side is ready to discuss detailed terms of reference for the Board, timetables and sources of funding for the relocation from and return to the areas under territorial adjustment. TkCyp position: Delineation of the boundaries of Constituent States shall be done by a Boundary Commission according to phases and the United Nations force shall observe the delineation activities. At the end of each phase following the completion of delineation, the transfer of each certain part of territory shall be effected and boundaries of the Constituent States shall change accordingly. Until territory is transferred, public order and security stay under the responsibility of the Constituent State police forces and other relevant authorities that will transfer the territory. In our view there is a need for compatibility between the practical implementation of the basic provisions of the comprehensive settlement and of territorial adjustment, as well as a need for the parallel and interlinked implantation of these provisions. Provisions on the completion of certain phases of the territorial adjustment shall be implemented in a synchronized way with the entry into force of the new protocol incorporating the settlement into the EU treaties.